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INTERNATIONAL SCIENTIFIC JOURNAL ”SUPREMACY OF LAW”

REVISTĂ ȘTIINȚIFICĂ INTERNAȚIONALĂ ”SUPREMAȚIA DREPTULUI”

МІЖНАРОДНИЙ НАУКОВИЙ ЖУРНАЛ «ВЕРХОВЕНСТВО ПРАВА»

JOURNAL SCIENTIFIQUE INTERNATIONAL ”SUPRÉMATIE DE DROIT”

МЕЖДУНАРОДНЫЙ НАУЧНЫЙ ЖУРНАЛ «ВЕРХОВЕНСТВО ПРАВА»

№ 1, 2021

Спеціалізоване видавництво ЮНЕСКО СОЦІО Specialized publishing house

AUM

USPEE CONSTANTIN STERE

SUPREMACY OF LAW

INTERNATIONAL SCIENTIFIC JOURNAL

No. 1, year 6 (2021)

The journal is registered by the Ministry of Justice of the Republic of Moldova, Decision No. 311 of July 12, 2016

Field of research: **Legal sciences**

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All articles are double-blind peer reviewed

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Nr. 1, anul 6 (2021)

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JOURNAL SCIENTIFIQUE INTERNATIONAL

N° 1, année 6 (2021)

Le journal est enregistré par le Ministère de la Justice de la République de Moldova, Décision n° 311 du 12 juillet 2016

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МЕЖДУНАРОДНЫЙ НАУЧНЫЙ ЖУРНАЛ

№. 1, год 6 (2021)

Журнал зарегистрирован Министерством юстиции Республики Молдова,
Решение № 311 от 12 июля 2016 г.

Область исследования: **Юридические науки**

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Юрие ФРУНЗЭ, доктор права, доцент, Институт юридических, политических и социологических исследований, Республика Молдова
Михай ГЕОРГИЦЭ, доктор хабилитат юридических наук, профессор, Молдавский Государственный Университет
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CONTENT		CUPRINS
Gheorghe AVORNIC, Violeta COJOCARU, Iulian MORARU History of codification of private law in the Republic of Moldova	8	*Gheorghe AVORNIC, Violeta COJOCARU, Iulian MORARU* Istoricul codificării materiei de drept privat în Republica Moldova
Marin DOMENTE Freedom of speech as a fundamental right within the situational context of the Republic of Moldova and Transnistria	29	*Marin DOMENTE* Libertatea de exprimare ca drept fundamental în contextul situațional al Republicii Moldova și Transnistria
Alexandr TERNOVSCHI Interaction of constitutional guarantees of human rights with power, economy and capital	37	*Alexandr TERNOVSCHI* Interacțiunea garanțiilor constituționale a drepturilor omului cu puterea, economia și capitalul
Vasilii IGNATIEV Constitutional framework for the development of self-regulatory organizations as a way of protection against corruption	47	*Vasilii IGNATIEV* Cadrul constituțional de dezvoltare al organizațiilor de autoreglementare ca modalitate de protecție contra corupției
Evgheni FLOREA, Elena S. PUSTELNIK On regulation of cryptocurrency: international experience	60	*Evgheni FLOREA, Elena S. PUSTELNIK* Despre reglementarea juridică a criptomonedei: experiența internațională
Ion POSTU, Elena TENTIUC The classification of coded acts	75	*Ion POSTU, Elena TENTIUC* Clasificarea actelor codificate
Dumitrita BOLOGAN Generalities on legal regulation of cartel agreements	83	*Dumitrița BOLOGAN* Generalități cu privire la reglementarea juridică a înțelegerilor de cartel
Igor SOROCEANU Some general aspects of mediation: notion, essence, content	91	*Igor SOROCEANU* Unele aspecte generale privind medierea: noțiune, esență, conținut
Constantin MIHALESCU The need to strengthen the mediation institution in commercial cases in Romania and the Republic of Moldova	100	*Constantin MIHALESCU* Necesitatea întăririi instituției medierii în cauze comerciale în România și în Republica Moldova
Andrian CRETU Legal regime for waste management in the Republic of Moldova	111	*Andrian CREȚU* Regimul juridic al gestionării deşeurilor în Republica Moldova
Liliana BELECCIU The legality of the “share” in the billing of the public water supply and sewage service	120	*Liliana BELECCIU* Legalitatea «cotei-părţi» în facturarea serviciului public de alimentare cu apă şi de canalizare
Tudor CAPSA Analysis of the law of the Republic of Moldova on the granting of compensation in the event of the death of one of the spouses	127	*Tudor CAPȘA* Analiza legii Republicii Moldova cu privire la acordarea indemnizației în cazul decesului unuia dintre soți
Gheorghe SULT Separate aspects of the prosecutor's preparation for presentation of the state accusations in the court	139	*Gheorghe SULT* Unele aspecte ale pregătirii procurorului pentru prezentarea acuzațiilor publice în instanța de judecată
Marcela SOMICU (BANU) The barrier between irresponsibility and responsibility. Considerations regarding the forensic psychiatric expertise in criminal law	148	*Marcela ȘOMICU (BANU)* Bariera între iresponsabilitate și responsabilitate. Considerații privind expertiza medico-legală psihiatrică în dreptul penal
Irina LESI Formation of the penitentiary system of Soviet Ukraine (first half of the 20th century)	155	*Irina LESI* Formarea sistemului penitenciar al Ucrainei Sovietice (prima jumătate a secolului XX)
Gheorghe AVORNIC, Serghei CHUCHA Digital technologies: the state and prospects of legal regulation in the Russian Federation and the Republic of Moldova (International round table overview)	164	*Gheorghe AVORNIC, Serghei CHUCHA* Tehnologii digitale: starea și perspectivele reglementării juridice în Federația Rusă și Republica Moldova (Prezentare generală a mesei rotunde internaționale)

TABLE DE MATIÈRES		ОГЛАВЛЕНИЕ
Gheorghe AVORNIC, Violeta COJOCARU, Iulian MORARU Histoire de la codification du droit privé en République de Moldova	8	*Георге АВОРНИК, Виолета КОЖОКАРУ, Юлиан МОРАРУ* История кодификации частного права в Республике Молдова
Marin DOMENTE La liberté d'expression en tant que droit fondamental dans le contexte situationnel de la République de Moldova et de la Transnistrie	29	*Марин ДОМЕНТЕ* Свобода слова как фундаментальное право в ситуационном контексте Республики Молдова и Приднестровья
Alexandr TERNOVSCHI Interaction des garanties constitutionnelles des droits de l'homme avec le pouvoir, l'économie et le capital	37	*Александр ТЕРНОВСКИЙ* Взаимодействие конституционных гарантий прав человека с властью, экономикой и капиталом
Vasilii IGNATIEV Cadre constitutionnel pour le développement d'organisations d'autoréglementation comme moyen de protection contre la corruption	47	*Василий ИГНАТЬЕВ* Конституционные основы развития организаций саморегулирования как способ защиты от коррупции
Evgheni FLOREA, Elena S. PUSTELNIK Sur la réglementation juridique de la cryptocurrence: expérience internationale	60	*Евгений ФЛОРЯ, Елена С. ПУСТЕЛЬНИК* О правовом регулировании криптовалют: международный опыт
Ion POSTU, Elena TENTIUC Classification des actes codifiés	75	*Ион ПОСТУ, Елена ТЕНТЮК* Классификация кодифицированных докуменов
Dumitrita BOLOGAN Généralités sur la réglementation juridique des accords de cartel	83	*Думитрица БОЛОГАН* Общие положения о правовом регулировании картельных соглашений
Igor SOROCEANU Certains aspects généraux de la médiation: notion, essence, contenu	91	*Игор СОРОЧАНУ* Некоторые общие аспекты медиации: понятие, сущность, содержание
Constantin MIHALESCU La nécessité de renforcer l'institution de la médiation dans les affaires commerciales en Roumanie et en République de Moldova	100	*Костантин МИХАЛЕСКУ* Необходимость укрепления института посредничества в коммерческих делах в Румынии и в Республике Молдова
Andrian CRETU Régime juridique de la gestion des déchets en République de Moldova	111	*Андриан КРЕЦУ* Правовой режим менеджмента отходов в Республике Молдова
Liliana BELECCIU La légalité de la «quote-part» dans la facturation du service public d'eau et d'assainissement	120	*Лилиана БЕЛЕКЧИУ* Законность «доли» в счетах общественной услуги водоснабжения и канализации
Tudor CAPSA Analyse de la loi de la République de Moldova sur l'octroi des prestations en cas de décès de l'un des époux	127	*Тудор КАПША* Анализ закона Республики Молдова о предоставлении пособия в случае смерти одного из супругов
Gheorghe SULT Certains aspects de la préparation du procureur à la présentation des accusations publiques devant le tribunal	139	*Георгий СУЛТ* Отдельные аспекты подготовки прокурора к представлению государственного обвинения в судебной инстанции
Marcela SOMICU (BANU) La barrière entre irresponsabilité et responsabilité. Considérations sur l'expertise médico-légale psychiatrique en droit pénal	148	*Марчела ШОМИКУ (БАНУ)* Барьер между вменяемостью и невменяемостью. Размышления относительно психиатрической судебно-медицинской экспертизы в уголовном праве
Irina LESI Formation du système pénitentiaire de l'Ukraine Soviétique (première moitié du 20e siècle)	155	*Ирина ЛЕСЬ* Становление уголовно-исполнительной системы Советской Украины (первая половина XX века)
Gheorghe AVORNIC, Serghei CHUCHA Technologies numériques: état et perspectives de la réglementation juridique en Fédération de Russie et en République de Moldova (Aperçu de la table ronde internationale)	164	*Георге АВОРНИК, Сергей ЧУЧА* Цифровые технологии: состояние и перспективы правового регулирования в Российской Федерации и Республике Молдова (Обзор международного круглого стола)

CZU 341.9(478)
DOI https://doi.org/10.52388/2345-1971.2021.e1.01

HISTORY OF CODIFICATION OF PRIVATE LAW IN THE REPUBLIC OF MOLDOVA[i]

Gheorghe AVORNIC
Doctor habilitat in Law, University Professor, University of European Political and Economic Studies „Constantin Stere", Chisinau, Republic of Moldova
e-mail: *avornic@yahoo.fr*
https://orcid.org/0000-0002-2673-4331

Violeta COJOCARU
Doctor habilitat in Law, University Professor, State University of Moldova, Chisinau, Republic of Moldova
e-mail: *violetacojocaru@yahoo.fr*
https://orcid.org/0000-0002-3670-5665

Iulian MORARU
PhD student, State University of Moldova, Chisinau, Republic of Moldova
e-mail: *iulian.moraru94@gmail.com*
https://orcid.org/0000-0002-3670-5665

The division of the entire system of law into public law and private law comes from ancient times, which we have referred to in several previous personal publications. In this article we will analyze the evolution of private law in the Republic of Moldova. Private law constitutes one of the fundamental subdivisions of the science of law as a whole. At the level of the Republic of Moldova, the subdivision in question represents a distinct specific in the context that: (i) it is stratified into numerous branches of law and (ii) it constitutes a symbiosis of several national, supranational and international private legislations that correspond to modern trends of evolution of related social relations. One of the main branches of domestic private law is civil law, namely the rules tangent to the branch of law in question regulate a considerable number of social relations varied in terms of structure and content. This article will briefly address evolutionary-historical aspects of the private law legislation of the Republic of Moldova. In particular, we will analyze the influence of the Model Civil Code of the CIS States, on the one hand, and European legislation, on the other. Historical aspects will be divided into three periods.

***Keywords**: private law, public law, Civil Code, Republic of Moldova, Commonwealth of Independent States, European Union, European legislation.*

ISTORICUL CODIFICĂRII MATERIEI DE DREPT PRIVAT ÎN REPUBLICA MOLDOVA

Divizarea întregului sistem de drept în drept public și drept privat vine din cele mai vechi timpuri, la care ne-am referit în mai multe publicații personale anterioare. În prezentul articol vom analiza evoluția dreptului privat în Republica Moldova. Dreptul privat constituie una dintre subdiviziunile fundamentale ale științei dreptului în ansamblu. La nivelul Republicii Moldova, subdiviziunea în cauză reprezintă un specific distinct în contextul în care: (i) este stratificat în numeroase ramuri de drept și (ii) constituie o simbioză a mai multor legislații private naționale, supranaționale și internaționale care corespund tendințelor moderne de evoluție a relațiilor sociale aferente. Una dintre principalele

[i] This article was published in Romanian (https://uspee.md/wp-content/uploads/2022/04/SD_nr.-1_RO_tipar_var.15_final.pdf. - P. 8-28) and Russian (*Private law in the countries of the former USSR*. Digest of articles. - Москва: Статут, 2022. - 546 p. - P. 331-361).

ramuri de drept privat autohton este dreptul civil, or anume normele tangente ramurii de drept în cauză reglementează un număr considerabil de raporturi sociale variate din punct de vedere a structurii și conținutului. În prezentul articol vor fi abordate succint aspecte evolutiv-istorice ale legislației în materie de drept privat a Republicii Moldova. În particular, vom analiza influența modelului Codului Civil al Statelor CSI, pe de o parte și a legislației europene, pe de altă parte. Aspectele istorice vor fi divizate în trei perioade.

Cuvinte-cheie: *drept privat, drept public, Cod civil, Republica Moldova, Comunitatea Statelor Independente (CSI), Uniunea Europeană, legislație europeană.*

HISTOIRE DE LA CODIFICATION DU DROIT PRIVÉ EN RÉPUBLIQUE DE MOLDOVA

La division de l'ensemble du système de droit en droit public et en droit privé provient des temps anciens, auxquels nous avons fait référence dans plusieurs publications personnelles précédentes. Dans cet article, nous analyserons l'évolution du droit privé en République de Moldova. Le droit privé constitue l'une des subdivisions fondamentales de la science du droit en général. Au niveau de la République de Moldova, la subdivision en question représente une spécificité distincte dans le contexte que: (i) elle est stratifiée en de nombreuses branches du droit et (ii) elle constitue une symbiose de plusieurs législations privées nationales, supranationales et internationales qui correspondent aux tendances modernes d'évolution des relations sociales afférentes. L'une des principales branches du droit privé national est le droit civil, à savoir que les règles tangentes à la branche du droit en question régissent un nombre considérable de relations sociales variées en termes de structure et de contenu. Cet article abordera brièvement les aspects historiques évolutifs de la législation de droit privé de la République de Moldova. En particulier, nous analyserons l'influence du Code Civil modèle des États de la CEI, d'une part, et de la législation européenne, d'autre part. Les aspects historiques seront divisés en trois périodes.

Mots-clés: *droit privé, droit public, Code Civil, République de Moldova, Communauté d'États Indépendants, Union Européenne, législation européenne.*

ИСТОРИЯ КОДИФИКАЦИИ ЧАСТНОГО ПРАВА В РЕСПУБЛИКЕ МОЛДОВА

Разделение всей правовой системы на публичное право и частное право восходит к древним временам, о чем мы упоминали в нескольких предыдущих своих публикациях. В данной статье мы проанализируем эволюцию частного права в Республике Молдова. Частное право - один из фундаментальных разделов юридической науки в целом. На уровне Республики Молдова рассматриваемое подразделение представляет собой отчетливую специфику в контексте, в котором: (i) оно стратифицировано на множество отраслей права и (ii) представляет собой симбиоз нескольких национальных, наднациональных и международных частных законодательств, которые соответствуют современным тенденциям развития социальных отношений. Одной из основных отраслей внутреннего частного права является гражданское право, то есть нормы, относящиеся к данной отрасли права, регулируют значительное количество социальных отношений, отличающихся по структуре и содержанию. В статье также кратко рассмотрены эволюционно-исторические аспекты законодательства о частном праве Республики Молдова. В частности, мы проанализируем влияние модели Гражданского кодекса государств СНГ, с одной стороны, и европейского законодательства, с другой. Исторические аспекты будут разделены на три периода.

Ключевые слова: *частное право, публичное право, Гражданский кодекс, Республика Молдова, Содружество Независимых Государств (СНГ), Европейский Союз, европейское законодательство.*

Introduction

Private law is one of the fundamental subdivisions of the science of law as a whole. At the level of the Republic of Moldova, the subdivision in question is a distinct one in the context of: (I) stratified in numerous branches of law and (ii) constitutes a symbiosis of several national, supranational and international private laws which correspond to modern trends in the evolution of social relations. One of the main branches of domestic private law is civil law,

or, the tangent rules of the branch of law in question regulate a considerable number of different social relationships in terms of structure and content.

This Article will address briefly the evolving and historical aspects of the private law legislation of the Republic of Moldova.

1. Overview of the Chronology of the Evolution of Civil Law of the Republic of Moldova

Chronologically, the history of the private law of the Republic of Moldova can be divided into three stages, as follows:

- 1991-2002 – period during which the Civil Code of the Moldavian Soviet Socialist Republic was in force, adopted on December 26, 1964,
- 2002-2019 – period of application of the provisions of the Civil Code of the Republic of Moldova, adopted on June 6, 2002;
- 2019-present – period of application of the modernized Civil Code.

1.1. 1991-2002

a) As for the first period, it starts with the adoption of the Civil Code on December 26, 1964, at the 4th meeting of the former Supreme Soviet of the Republic of Moldova during the 6th term, which was to be implemented from July 1, 1965. This code was made up of 603 articles, grouped into 8 titles, as follows: General provisions; ownership; Obligations; Copyright; Right to discovery; Right to invention, Proposals for rationalization and industrial prototype (repealed by Law No 735 of 22.02.1996); Inheritance law; Legal capacity of foreign and non-nationals. Implement the civil laws of foreign States and international treaties.[1]

Title I included 88 articles contained in 5 chapters and aimed at provisions relating to persons, conventions, representation and prescription. Over the years, especially after 1990, the provisions on legal persons have become obsolete.

Title II had 66 articles regulating property relationships – socialist ownership of capital goods in the form of state ownership and *kolkhozal (collective farm)* cooperative ownership. The categories of goods that were in private ownership were limited, and included those of everyday use, personal consumption, comfort, and household.

Title III was divided into two parts: General provisions on obligations and different categories of obligations.

The provisions of the first part required the conclusion that these rules were intended to ensure the development of the planned economy. With regard to the second part, the Code provided for their fees in the appropriate manner and within the time limit, including the prohibition to unilaterally refuse performance of the obligations.

Title IV – author rights, completed with the provisions of the Law on copyright and related rights, regulated the relationships arising in connection with the creation and exploitation of literary, artistic and scientific works and related rights.

Title VII - the law of succession was intended for the rules of succession relations. The rules contained in the title specified laid down that the succession could be a will and legal. In the case of legal inheritance, three classes of heirs were provided, and for some categories of persons the right to a compulsory share of the succession was provided for.

Title VIII, by means of Articles 596 - 603, was devoted to the Regulation of relations with elements of extraneity – the legal capacity of foreign nationals and stateless persons and foreign legal persons, expressly indicating the laws governing these relations.[2]

1.2. 2002-2019

As regards the second period, it starts with the entry into force of the new Civil Code. It should be noted that the process of adopting the new Civil Code itself included a pre-phase, a

[1] Codul civil al RSSM din 26.12.1964.

[2] Codul civil al Republicii Moldova din 06.06.2002

process which ended with the adoption of the Code. Thus, on November 3, 1994, the Parliament adopted judgment No. 954 – XIII, by which it designated the drafting group for the Civil Code. On October 19, 2000, the Parliament adopted at first reading the draft of the Civil Code, establishing in October 26, 2000, by judgment No. 1315, a special committee which will submit the nominated draft to the Parliament.

On June 6th, 2002, the Parliament adopted the new civil code structured in five books, as follows: Book I – General Part; Book II – Rights in Rem; Book III – Obligations; Book IV – Law of Succession; Book V – Private International Law.[3]

In **Book I**, General Part, there are four titles: Common Provisions, Persons, Legal Acts and Time Limits. The merit of this book lies in the detailed regulation of such institutions, such as the legal act, the subject-matter of the legal report, limitation periods.

Book II- Rights in Rem - includes five titles: Heritage, Possession, Property, Other Rights in Rem and the Register of Immovable Property. In this book for the first time, in addition to the right to property, other real rights known as the dismemberment of the right of property – usufruct, use, habitat, servitude and superficies, were regulated.

The third Book - the Obligations - is the most voluminous and contained approximately 900 articles, divided into three titles: About Obligations in General, about Contracts and about Categories of Obligations. Institutions are regulated in Title I as plurality of creditors and debtors, assignment of claims and the taking-up of debts, the effects of non-performance, the means of guaranteeing the performance of obligations and the termination of obligations, and so on. The second title contains rules on the content and conclusion of the contract, the legal effects, interpretation and termination. Title III sets out the rules governing various categories of obligations, such as: sale-purchase, exchange, donation, rental, etc.

Book IV contains VII titles: General Provisions on the Inheritance; Testamentary Legacy; Legal Inheritance; Holiday Succession; Legal Arrangement of the Heir; Confirmation of the Right to Inheritance; Partition of the Estate of the Succession.

Book V contains II titles: General Provisions on Private International Law; Conflict Rules.

The new Civil Code, as compared to the one previously applicable, contains a number of new institutions, which we will try to list exhaustively below. Thus, the new Civil Code enshrines the customs as a source of law, stipulating that: "The customs are applied if they do not contravene the law, the public order or the morals". The Civil Code also regulates self-defense as a means of protecting civil rights. The institution of the cleansing and guardianship is also regulated in the Civil Code, previously it was regulated in the Family Code. As far as the institution of possession is concerned, it is dealt with as a matter of fact and serves as the basis for usurpation as a means of acquiring ownership. A special place, as a novelty brought about by the Civil Code, is the Regulation of the Dismemberment of the Right of usufruct, use, habitat, servitude and superficies.

1.3. 2019- present

On March 1, 2019 the provisions of the modernized Civil Code came into force, which signified a considerable evolution of the civil normative framework of the Republic of Moldova. In this context, we specify that a number of substantial changes have been made.

2. Compliance with the provisions of the Civil Code of the Republic of Moldova from June 6, 2002 with the provisions of the CIS States' Code

The adoption of the Civil Code of the Republic of Moldova on June 6, 2002 was a real revelation of the civil law in the Republic of Moldova.

[3] Modelul Codului civil al Comunității Statelor Independente (CSI), aprobat la 17.02.1996.

We note that the regulatory model has been partly taken over from the Civil Code model of the Community of Independent States (CIS).

In the context, it should be specified that the model legislation of the CIS States has the following structure: Compartment I - Common Provisions (Article 1 - Article 219); Compartment II - Property and Other Rights in REM (Article 220 - Article 307); Compartment III - General Part of Binding Law (Article 308 - Article 448); Compartment IV - Special Types of Obligations (Article 449 - Article 1033); Compartment V - Intellectual Property (Article 1034 - Article 1145); Compartment VI - Law of Succession (Article 1146 - Article 1193); Compartment VII - Private International Law (Article 1194 - Article 1235).[4]

Thus, it is clear that the main structural difference between the regulations of the Civil Code of the Republic of Moldova and the Civil model Code of the CIS States lies in the regulation of intellectual property. In this context, we specify that the rules relating to intellectual property law are contained in acts other than the Civil Code.

Further, we will address the similarities between the regulations of the Civil Code of the Republic of Moldova and the model of the CSI States' Code, according to the structure of the respective normative acts.

At the level of general provisions, both acts contain rules on relations governed by civil law, structure of civil law, customs, analogy of law and right, action in time of civil law, relations between civil law and international trio, grounds for the appearance of civil rights and obligations, exercise of rights, judicial defense of civil rights, methods of defense of civil rights, declaration of invalidity of acts contrary to the law issued by a public authority, self-defense, compensation for damage, defense of professional honor, dignity and reputation, persons (capacity to use and exercise of natural and legal persons), guardianship and cleaning, reorganization of legal persons, companies, the particular types of companies, non-commercial organizations, legal acts and representation, time limits.

Thus, among the most important co-incident provisions of Book I of the Civil Code of the Republic of Moldova with the provisions of the CSI States' model of the Civil Code, we consider the following:

Both acts provide for relations governed by civil law. Thus, according to the provisions of Article 2(1) of the Civil Code of the Republic of Moldova from June 6, 2002 in the initial editorial office: "Civil law determines the legal status of participants in civil proceedings, the grounds on which the right to property is established and the manner in which it is exercised, and governs the contractual and other obligations and other non-property relationships connected with them."

Accordingly, in accordance with the provisions of Article 1 (1) of the model of the CIS States Code, "Гражданское законодательство определяет правовое положение участников гражданского оборота, основания возникновения и порядок осуществления права собственности и других вещных прав, прав на результаты интеллектуальной деятельности, регулирует договорные и иные обязательства, а также другие имущественные и связанные с ними личные неимущественные отношения, основанные на равенстве, автономии воли и имущественной самостоятельности их участников."

"Civil law regulates the legal position of participants in civil proceedings, the grounds on which and the procedure for the exercise of the right to property and other rights in rem and rights to the results of intellectual activity, and regulates contractual and other obligations; as well as other property and related personal non-property relations based on the equality, autonomy of will and property autonomy of the participants."

[4] Modelul Codului civil al Comunității Statelor Independente (CSI), aprobat la 17.02.1996.

Article 2(2) also provides for the regulation of family, housing, labor, exploitation of natural resources and protection of the environment.

In the same context, the CIS Code model provides for the following: „Семейные, трудовые отношения, отношения по использованию природных ресурсов и охране окружающей среды, отвечающие признакам, указанным в абзаце первом настоящего пункта, регулируются гражданским законодательством, если законодательством о браке и семье, трудовым, земельным и другим специальным законодательством не предусмотрено иное."

„Family, labour relations, use of natural resources and environmental protection, which meet the criteria set out in paragraph 1 of this paragraph, are governed by civil law if the law on marriage and family labour, land and other special legislation do not provide otherwise."

Thereafter, Article 4 governs practice as a source of civil law. Thus, according to these provisions: "(1) the practice is a standard of conduct which, although not enshrined in legislation, is generally recognized and applied in a given area of civil relations for a long time. (2) the practice applies only if it is not contrary to law, public policy and to accepted principles of morality."

At the same time, in accordance with the provisions of Article 5 of the CIS States' Code of classification, „1. Обычаем делового оборота признается сложившееся и широко применяемое в какой-либо области предпринимательской деятельности правило поведения, не предусмотренное законодательством, независимо от того, зафиксировано ли оно в каком-либо документе. 2. Обычаи делового оборота, противоречащие обязательным для участников соответствующего отношения положениям законодательства или договора, не применяются."

„1. Business usage recognizes an established and widely applied rule of conduct not provided for by law in a particular area of business, whether or not it is recorded in a document. 2. Trade customs which are contrary to the provisions of law or contract binding on the parties concerned shall not apply."

Consistently, the Civil Code of the Republic of Moldova enshrines the analogy of the law and the analogy of the right. A similar regulation is also reflected in the CIS States' model Civil Code. Furthermore, Article 6 (which governs the temporal action of civil law) lays down two fundamental principles of the law in question: The principle of non-retroactivity of the new law and the principle of the ultra-activity of the old law.

Contextual, in accordance with the provision of the Rule of Article 4 of the CIS States' model Civil Code, „1. Акты гражданского законодательства не имеют обратной силы и применяются к отношениям, возникшим после введения их в действие. Действие закона распространяется на отношения, возникшие до введения его в действие, только в случаях, когда это прямо предусмотрено законом. 2. По отношениям, возникшим до введения в действие акта гражданского законодательства, он применяется к правам и обязанностям, возникшим после введения его в действие, за исключением отношений сторон по договору, заключенному до введения в действие акта гражданского законодательства.

„1. Civil laws are not retroactive and apply to relationships that have arisen since their enactment. The Act applies to relationships that arose prior to its enactment only where it is expressly provided for by law. 2. For relationships arising prior to the enactment of a civil law, it applies to rights and obligations arising after the enactment of the civil law, except for the relationship of the parties to a contract entered into prior to the enactment of a civil law.

Если после заключения договора принят закон, устанавливающий обязательные для сторон правила, иные, чем те, которые действовали при заключении договора, условия заключенного договора сохраняют силу,

кроме случаев, когда в законе установлено, что его действие распространяется на отношения, возникшие из ранее заключенных договоров."

If, after the conclusion of the contract, a law has been adopted establishing rules binding on the parties other than those in force at the time of the conclusion of the contract, the terms of the contract shall remain in force, unless the law provides: that it applies to relations arising from previous contracts.»

Thereafter, the source of civil rights and obligations are indicated by Article 8(2). In this connection, it was said: "Civil rights and obligations arise from:

a) contracts and other legal acts;

b) acts issued by a public authority which are laid down by law as a basis for the emergence of civil rights and obligations;

c) a judgment in which rights and obligations are laid down;

d) following the creation and acquisition of assets on grounds not prohibited by law;

e) following the development of scientific works, the creation of literary works, works of art, inventions and other results of intellectual activity;

f) as a result of causing damage to another person;

g) following unjust enrichment;

h) as a result of other facts of natural and legal persons and of events to which the law relates to the creation of legal effects in civil matters.

The counterpart article in the CIS States' model Civil Code, by means of paragraph 1, shall have:

„...гражданские права и обязанности возникают:

1) из договоров и иных сделок, предусмотренных законом, а также из договоров и иных сделок, хотя и не предусмотренных законом, но не противоречащих ему;

2) из актов государственных органов, которые предусмотрены законом в качестве основания возникновения гражданских прав и обязанностей;

3) из судебного решения, установившего гражданские права и обязанности;

4) в результате создания и приобретения имущества по основаниям, не запрещенным законом;

5) вследствие создания произведений науки, литературы, искусства, изобретений и иных результатов интеллектуальной деятельности;

6) вследствие причинения вреда другому лицу;

7) вследствие неосновательного обогащения;

8) вследствие иных действий граждан и юридических лиц;

9) вследствие событий, с которыми законодательство связывает наступление гражданско-правовых последствий."

...civil rights and obligations arise:

1) from contracts and other transactions provided for by law, as well as from contracts and other transactions not provided for by law but not contrary to it;

2) acts of State organs which are provided by law as grounds for the creation of civil rights and obligations;

3) from a court decision establishing civil rights and obligations;

4) through the creation and acquisition of property on grounds not prohibited by law;

5) as a result of the creation of scientific, literary, artistic, inventive and other intellectual works;

6) as a consequence of an injury to another person;

7) due to unjust enrichment;

8) as a result of other actions by citizens and legal entities;

9) in consequence of events to which the law attributes civil consequences."

Later, the provisions of Article 11 of the Civil Code of the Republic of Moldova in the initial editorial were regulating the methods of civil rights defense, which is achieved by:

a) “recognition of the right;

b) restoring the situation prior to the infringement and removing acts which infringe or create a danger of infringement;

c) recognition of the invalidity of the legal act;

d) a declaration that the act issued by a public authority is invalid;

e) enforcement of the obligation in kind;

f) self-defense;

g) compensation for damage;

h) the collection of the criminal clause;

i) compensation for non-material damage;

j) the termination or modification of the legal relationship;

k) the non-application by the court of any act contrary to the law issued by a public authority;

l) other routes provided for by law.”

Similar provisions are contained in the CIS States’ classification code model. To this end, in accordance with Article 12 of the nominated act, “Защита гражданских прав осуществляется путем”: *“Protection of civil rights is carried out by:*

1) признания права;

2) восстановления положения, существовавшего до нарушения права;

3) пресечения действий, нарушающих право или создающих угрозу его нарушения;

4) признания сделки недействительной и применения последствий ее недействительности;

5) признания недействительным акта государственного органа;

6) присуждения к исполнению обязанности в натуре;

7) возмещения убытков;

8) взыскания неустойки;

9) компенсации морального вреда;

10) прекращения или изменения правоотношения;

11) неприменения судом акта государственного органа, не соответствующего законодательству;

12) иными способами, предусмотренными законом”.

1) Recognition of a right;

2) Restoration of the situation that existed before the violation of the right;

3) To prevent actions that violate or threaten to violate the right;

4) Invalidating the transaction and applying the consequences of its invalidity;

5) The annulment of an act of a public authority;

6) Execution award of duties in kind;

7) Compensation for damages;

8) Recovery of liquidated damages;

9) Compensation for moral injury;

10) Termination or change of legal relationship;

11) Non- application by the court of an act of a state body that does not comply with the law;

12) Other means provided by law”.

The last Article of Title I regulates the defense of professional honor, dignity and reputation. The corresponding provisions of the CIS States’ model Civil Code are contained in the text of Article 19.

Next, the text of Title II contains provisions on the legal regime of persons in general.

With reference to legal persons, by means of the provisions of Article 55 of the Civil Code of the Republic of Moldova in its original version, the legal person is defined as follows: ‘A legal person is an organization which has a distinct heritage and is responsible for its obligations with that heritage, may acquire and exercise non-property personal and property rights on its own behalf, to assume obligations, be a plaintiff and a defendant before in court.’ A similar provision is laid down in the rule of Article 61 (1) of the model of the CIS States’ model Civil Code. Thus, in accordance with those provisions: “Юридическим лицом признается организация, которая имеет в собственности, хозяйственном ведении или оперативном управлении обособленное имущество и отвечает по своим обязательствам этим иму-

ществом, может от своего имени приобретать и осуществлять имущественные и личные неимущественные права, нести обязанности, быть истцом и ответчиком в суде."

"A juridical person is an entity that owns, manages or is operationally managed separate property and is liable for its obligations by that property, may, on its own behalf, acquire and exercise property and personal non-property rights, bear duties, be a plaintiff and a respondent in court."

It should also be noted that the text of both acts contains provisions on the suitability for use and the ability to exercise of natural and legal persons, and provisions on forms of legal organization of legal persons for a profit-making and non-profit-making purpose, as well as rules on how to reorganize/transform legal persons for profit.

Title III shall be referred to as 'Legal Act and Representation', a similar name being assigned to the appropriate compartment in the model of the CIS States Code – "Сделки и представительство" *"Transactions and representation".*

Thus, the definition of a legal act was set out in Article 195, which is defined as "the manifestation by natural and legal persons of the will to give rise to, amend or extinguish civil rights and obligations". That is, Article 152 of the model Civil Code enshrines the following definition of the legal act „Сделками признаются действия граждан и юридических лиц, направленные на установление, изменение или прекращение гражданских прав и обязанностей." *Transactions are defined as actions of citizens and legal persons aimed at establishing, modifying or terminating civil rights and obligations."*

Then the provisions on the nullity of the legal act follow. The Civil Code distinguishes absolute nullity from the relative nullity of the legal act. In the same context, Article 165 of the CIS Code model regulates „Оспоримые и ничтожные сделки". *"Negotiable and void transactions."*

Further on, we note that the provisions of the CIS States' model of the CIS Civil Code overlap with the provisions of the Civil Code of the Republic of Moldova only in structural terms. Thus, both acts include rules on property rights and other rights in rem, obligations, contracts, special types of obligations, inheritance law and private international law in the order specified.

3. The influence of European legislation on the civil law of the Republic of Moldova

On March 1, 2019, the amendments to the text of the Civil Code of the Republic of Moldova entered into force, known as the modernization of the civil Code.

The most important legislative sources of reference for the preparation of the draft amendment to the Civil Code of the Republic of Moldova (hereinafter – the project) are the following:

- The draft Common Frame of reference of the European Union developed by academia in Europe published in 2008;
- German Civil Code;
- The French Civil Code, including the amendments made by order No. 2016-131 of February 10, 2016 recasting contract law, general rules and proof of obligations (*Ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la prevue des obligations*);
- Civil Code of Italy; of the Netherlands; the laws of private law of Estonia; the new Civil Codes of the Czech Republic (2014), Hungary (2014), Argentina (2015);
- Romania's new Civil Code, in force since October 1, 2011;
- Civil Code of the Russian Federation, as amended by the reform implemented between 2013 and 2015;
- European law – in particular the directives on private law and consumer protection. Consideration has also been given to the Draft Regulation of the European Parliament and of the Council on a Common European Sales Law

Regulation (CESL), which, however, was not adopted at EU level.

The aim of the project was to modernize the private law of the Republic of Moldova, in line with the latest European and international trends in the field, to make civil law more precise and predictable, to better regulate the rights of the personality and their limits, to better protect the validity of contracts, to empower the managers of legal persons governed by private law[5].

In terms of common provisions, the draft supplements Article 1 of the Code with the principles of the protection of private, private and family life, of good faith and of consumer protection. In the same context, the draft introduces the principle already recognized by the European Court of Human Rights of uniform and certain interpretation and application of the law (Article 4(4) of the modernized civil Code).

In the same context, with a view to developing the principle of good faith, which, in private law, performs numerous functions to fill legal gaps and to order the behavior of civil law subjects, as modeled on Article I. – 1:103 of the draft Common Frame of reference (DCFR), good faith is defined. The reasonableness shall also be defined on the basis of the model of Article I. – 1:104 DCFR.

"According to the model of Article 7 Quebec Civil Code, Article 15 of Romania's Civil Code and Article 10 of the Russian Federation Civil Code the abuse of law is defined and regulated, that is the exercise of a subjective right exclusively with the intention of causing another person harm or otherwise harming them. The project also introduces the principle recognized in private law, *nemo auditur propriam turptitudem allegans*, i.e. the prohibition of invoking illegal or bad faith behavior (Article 14 of the Modernized Civil Code), which is legislated by Article 1:4(2) and (3) Hungarian Civil Code, Art. 1, paragraph 4 Civil Code of the Russian Federation as well as §6(2) Civil Code of the Czech Republic.

Moreover, given that in civil legal relations, notifications play a decisive role, either when a legal act is communicated (a claim is made, an offer is made to contract or a notice of termination is given) or information for a legal purpose (some information is given to the consumer), the draft introduces the new Article 22 into the Civil Code, based on the model of Article I. – 1:109 DCFR. It is recognized that the notification may be made by any means appropriate to the circumstances if the law or legal act does not impose a specific formal requirement. For the protection of consumers, any clause contrary to the provisions of this Article to the detriment of the consumer shall be null.

As regards the rules on persons, the term "habitual residence" has been introduced, which is in practice equivalent to the term "domicile".

With regard to the amendments made to the rules governing legal persons, the additions to the draft Article 177 of the modernized Civil Code, refers to several modern legislative trends:

- the possibility for a legal person to have more than one management (which is expressly allowed by the public limited liability company and limited liability company laws). Paragraph (5) introduces the supplementary rule that each manager may act in its own right, otherwise (that several or all directors must approve a legal act of the legal person) may be provided for in the instrument of constitution, but it is only applicable to third parties if an express reference to that legal person has been made in the register of advertisements relating to that legal person. The latter requirement is intended to relieve third parties from the burden of verifying the act of establishment of the legal person in this respect;
- possibility for a legal person to have another legal person as its administrator. It has been held that a legal person for profit may have

[5] Nota informativă asupra proiectului de modernizare a Codului Civil al Republicii Moldova. http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2017/aprilie/Nota_informativ_proiect_amendare_Cod_civil_xxxxxxx.pdf

another legal person as manager. With regard to the legal person for a non-profit purpose, they will be able to have the administrator of another legal person only in the expressly provided for by law;

• in dealings with third parties, the legal person is bound by the legal acts of the administrator unless the acts thus concluded exceed the limits of its powers under the law. This rule is already contained in the Law on private limited liability companies and transposes Article 10(2) of Directive 2009/101/EC;

• the registration of the administrator in the register of advertisements provided for by law renders any infringement of their designation unenforceable against third parties. This rule is already contained in Article 74(2) of the Law on limited liability companies and transposes Article 9 of Directive 2009/101/EC;

With regard to legal acts and representation, in line with the new trends of uniformity in contract law, it was decided to exclude Article 207 from the Code, so the case is no longer a condition of validity of a contract or other legal act. In addition to the arguments concerning the unpredictable and difficult to prove of this condition, it was also decisive that the French Civil Code, which first laid down the cause of the contract, and also has waived it as a result of the amendments made by order No 2016-131 of February 10, 2016 recasting contract law, the general regime and the proof of obligations. A very limited number of European States maintain the case as a condition of validity of contracts.

Article 325 of the modernized Civil Code has also been introduced, according to which, in cases expressly provided for by law, the court may, at the request of the person entitled, give a judgment which, from the date of final settlement, shall take the place of the legal act if the debtor refuses without justification to conclude the legal act, and all other validity conditions will be met.

With regard to nullity, that Chapter has been fundamentally reformed in the light of the deficiencies found in the voluminous case-law in cases where nullity is claimed, either by appeal or by procedural exception. The working group has recognized the drastic nature of nullity, which can lead to the loss of property and the abolition of some of the long-standing situations. Starting from the models offered by the Romanian Civil Code and the Russian Federation's Civil Code, in the editorial of Federal Law N 100- ФЗ of May7, 2013, the clear criterion of delimitation between absolute nullity and relative nullity was established, as follows: "(1) the legal act is void if nullity penalizes an infringement of a legal provision which safeguards a general interest (absolute nullity). (2) the legal act is inapplicable if nullity penalizes an infringement of a legal provision which safeguards a particular interest (relative nullity)."[6]

The clarification should be combined with the repeal of Article 220(1) of the previous Article of the Civil Code, which results in a presumption of absolute nullity, without examining the nature of the interest protected by invalidity. Paragraph 3 introduces the presumption of nullity relative to the case in which the nature of nullity is not expressly provided for and the nature of the protected interest is not unquestionable (in the same sense, Article 1252 of the Romanian Code of civil and Article 168(1) Civil Code of the Russian Federation). The right of the parties to declare absolute nullity or to declare relative nullity by agreement is also recognized, of course only where there is a basis for such nullity. Otherwise, the nullity agreement itself would be null.

In order to protect consumers, starting with the Italian Consumer Code, the concept of a consumer protection nullity has been introduced, which is a cause of absolute nullity, even if it protects a particular interest of the consumer. At the same time, such nullity will be pronounced only if and only to the extent that it benefits the consumer. For the rest, the contract will have to be maintained.

[6] Ibidem

Article 334 in the version of the modernized Civil Code, solves a common problem in notarial practice and case-law by responding to the question of whether an infringement of an mandatory rule would render the legal act null and void where the mandatory rule does not expressly provide for the nullity to be ordered. To this end, the distinction drawn by contemporary doctrine between explicit nullity and virtual nullity is used: (2) the legal act or clause contrary to an mandatory legal provision shall be null and void if that penalty is expressly provided for by the legal provision which has been infringed (express nullity). (3) the legal act or clause contrary to an mandatory legal provision which does not expressly provide for a declaration of invalidity shall be null and void if that penalty is to be applied in order for the purpose of the infringing legal provision to be attained (virtual nullity). Thus, in the absence of an express provision of a penalty of nullity in the infringed imperative rule, the person claiming nullity must prove that nullity must be applied in order for the purpose of the infringed legal provision to be attained. In total, the solutions established by the draft favor the validity of legal acts and place nullity as an extreme and exceptional penalty.

The concept of ineffective legal act is used in several developed legal systems to indicate the legal situation of an act which, although not null (not illegal in any respect), lacks a constituent element (usually the consent of a particular person) in order to have legal effect. In Germany, the concept is known as *schwabende Unwirksamkeit*, in Italy - *inefficacita*, the DCFR uses "ineffectiveness", and the Russian doctrine speaks about "сделка, чьи правовые последствия находятся в состонивени" *"a transaction whose legal effects are in limbo*". What is close to inefficiency with absolute nullity is that both are actions in the finding are imprescriptible. What is close to the inefficiency of relative nullity is that both can be remedied by obtaining the consent of the appropriate person. However, inefficiency cannot be equal to either absolute or relative nullity. Article 357 defines inefficiency, states that it may be removed, allows it to be invoked both by appeal and by procedural exception, and the court is obliged to invoke it of its own motion. The act of ineffectiveness of the legal act and the exception for claiming inefficiency shall be imprescriptible unless the law provides otherwise.

With regard to time limits, Article 404 of the modernized Civil Code (maximum duration of the statute of limitations) introduces an essential novelty in terms of prescription, namely that in all cases the limitation period may not exceed the maximum duration of ten years from the date of the infringement, and for actions relating to compensation for property and moral damage caused by death or damage to health, 30 years after the date of the infringement. However, in any case, it is not permitted to shorten the limitation period by less than one year, nor to extend the limitation period beyond ten years.

With regard to rights in rem, the provisions introduced in the modernized Civil Code aim to return to the traditional system of regulating the regime of real estate, namely the principle that everything on the land is part of the land (*superficies solo cedit*). To this end, the rule is introduced that immovable property is considered to be land and that construction, works, roads and other facilities on it are part of the land (cf. §93-95 German Civil Code; § 50 General Part of the Estonian Civil Code, 2002; art. 968 Latvia Civil Code, 1994; Articles 900 and 951 Quebec Code, etc.). Thus, the owner of the construction land cannot sell or mortgage the construction but can retain the land.

With regard to the obligations, one of the methods of modernization is to repeal and codify special laws having the same regulatory object as the existing rules in the Civil Code: Law No 198-XV of May 15, 2003 on rent in agriculture; Law No 59-XVI of April 28, 2005 on leasing; Chapters I and II on insurance contract of

Act No 407-XVI of December21, 2006 on insurance; Law No 256 of December 9, 2011 on unfair terms in consumer contracts; Law No 8 of February 26, 2016 on consumer rights when concluding contracts.

The aim of the codification is primarily to exclude, as far as possible, duplication in civil law, which in turn contributes to the uniform application of legislation and facilitates the task of practitioners of knowledge of civil law.

In particular, changes in non-performance have been introduced. This chapter, set out in the new editorial office by the project, is one of the key chapters of the proposed modernization of the Civil Code. First, because its regulations completely replace not only the former Chapter V (effects of non-performance of the obligation), but also Chapter III (Synallagmatic Contract) of Title II and Chapter VII (Resolution, Termination and Revocation of the Contract) of Title II. The Chapter thus provides a single, coherent system of legal means (also called legal remedies) of the creditor in the event of non-performance of the obligation in general and of contractual obligations in particular. Strengthening the remedies system also takes place through the exclusion of rules from the chapters of Title III dedicated to named contracts, which merely duplicate the rules of this chapter or which contain unjustified derogations from the rules of that chapter. Special rules on legal remedies of a contracting party in a named contract should be maintained if they are necessary in view of the specificities of the contract or if a special policy of protection of a contracting party so requires. The text of chapter VII is based on chapter 3: Means in case of non-execution (Chapter 3: Remarks for non-performance), Article III–3:101 - III–3:713 DCFR, which is based on the principles and concepts of the 1980 Vienna Convention on International Contracts for the Sale of Goods (to which the Republic of Moldova is a party) and the UNIDROIT Principles of international commercial contracts.

As regards contracts in general, the main novelty introduced by Article 993 is intended to specify the operative nature of the provisions contained in Book 3. In this way, the parties will be certain that they can fine the content of the contract to their needs without the risk of subsequently cancelling a clause. At the moment, many provisions on obligations and contracts are ambiguous, as they bring rules of conduct without being accompanied by the term "nullity-of-law" (thus indicating imperative nature), and are not accompanied by the term "unless the contract provides otherwise" (thus indicating the nature of the device). By way of example, we mention Article 971 in the previous editorial, the character of which is not certain, but logic would suggest that it has a device character. The rigor of legal certainty calls for a new approach when interpreting the nature of these provisions.

The principle of the operative nature of the legal provisions of the 3rd Book contains the following limitations: a) it concerns only those legal provisions which relate to the rights, obligations and other legal effects produced by the contract, including the distribution of risks in the contract. Therefore, the legal provisions governing the validity of contracts (including capacity or formal requirements; or the essential terms of a named contract) remain imperative; b) even if a legal provision refers to the legal effects arising from the contract, it shall be imperative if the penalty for nullity is provided for by the contract.

The modernized Civil Code introduces a new chapter on pre-contractual obligations, given the increasing importance of pre-contractual information obligations ensuring that parties are informed before the decision to enter into the contract is taken. In particular, pre-contractual information needs the consumer, who is presumed to be the weaker party to the contract. Other pre-contractual obligations covered by the chapter are the obligation to keep confidential when negotiating a contract and to negoti-

ate in good faith. This chapter is modeled on chapter III, Book II of the DCFR.

Regarding abusive clauses in contracts, acts concluded with consumer, the new regulation distinguishes between: a) unfair terms in consumer contracts (Article 1072), are those contained in the illustrative lists in Articles 1077 to 1079 and any other clause in a contract between a professional and a consumer, which has not been negotiated individually is considered unfair if it is proposed by the professional and puts the consumer at a considerable disadvantage, contrary to good faith; b) unfair terms in contracts between professionals (Article 1073), which are terms proposed by a party and which have not been individually negotiated, and only if they are included in the list provided for in Article 1077, and diverge considerably, contrary to good faith, from good commercial practice. The list of unfair terms in these contracts is thus closed; c) unfair terms in contracts other than those referred to in Articles 1072 and 1073, which are terms proposed by a party and which have not been individually negotiated, and only if they are included in the list provided for in article 1077, and disadvantage the other party considerably, contrary to good faith. The list of unfair terms in these contracts is thus closed.

Contextually, we specify that a new institution has been introduced, called "Fiducia" *"Trust law"*. The working group, together with the Ministry of Justice, drafted the amendments and additions to Book 3, including the new Title IV (Trust). In order to modernize the private law of the Republic of Moldova and, in particular, to meet the practical needs of the increasingly complex civil and commercial circuit, but also to ensure the implementation of innovations introduced by other amendments and additions to the Civil Code, it was decided to introduce the institution of trust in the Civil Code by completing Book 3 with Title IV. According to the draft, the trust is defined as a legal relationship in which a party (the trustee) is obliged to become the owner of an estate (trust estate), to administer it and dispose of it, in accordance with the conditions governing the relationship trust, for the benefit of a beneficiary or to promote a purpose of public utility".

Although trust is based on trust on the Anglo-Saxon legal system, many states in the continental legal system (to which the legal system of the Republic of Moldova also belongs) have introduced the concept of trust in recent decades. The present project is based on Book X - Trusts from the Draft Common Frame of Reference of the European Union, developed by the European academic environment, published in 2008. In addition, they have been studied and were taken into account the latest legislative developments at international and European level and in particular: a) The French Civil Code, in the wording of Law no. 2007-211 of February 19, 2007, by which Title XIV "On Trust" was introduced in the French Civil Code; b) the new Civil Code of Romania, in force since October 1, 2011; c) The Civil Code of the Quebec region; d) the draft EU Directive on Protected Funds published in 2004.

With regard to inheritance, amendments were introduced which conditioned a new wording of Book IV (to be entitled "Inheritance"), starting from the model provided by the German Civil Code, as well as the way in which this model was taken over by another post-Soviet but European state, Estonia, through the Estonian Heritage Act of 2009. Likewise, the latest legislative developments have been taken into account in: a) France - French Law reforming the successions of 2006, *Loi n°2006-728 du 23 juin 2006* Law No 2006-728 of June 23, 2006; b) Romania - the new Civil Code of Romania in force since 2011 and the new Code of Civil Procedure of Romania in force since 2013; c) European law - in particular the developments introduced by Regulation (EU) no. 650/2012 of July 4, 2012 on jurisdiction, applicable law, recognition and enforcement of judgments and acceptance and enforcement of authentic instruments in matters of succession and on the

creation of a European Certificate of Succession (in force since August 17, 2015).

The draft of Book IV follows the traditional and established provisions for dividing the inheritance into classes. The important conceptual changes, based on the German model, are: 1) moving the category of inheriting subjects - the parents of the deceased to the second - second class of inheriting. This is a typical approach for continental Europe, both in Germany and in France or Romania. The deceased's siblings and other descendants of the deceased's parents inherit, as part of the second grade, in the absence of the deceased's parents. 2) the surviving spouse is a legal heir, but does not belong to any class of heirs, but inherits together either with the heirs of class I, II or with the grandparents. The succession rate of the surviving spouse is fixed: 1/4 of the inheritance if he comes in competition with the heirs of the first class (children, in their absence - grandchildren, etc.); or 1/2 inheritance if it comes in competition with the class II heirs (parents of the deceased, siblings, or their descendants) or grandparents. In the absence of the first- and second-class heirs and if the grandparents are not alive, or if they have given up the inheritance or been declared unworthy, the surviving spouse collects the entire inheritance. (Article 2185 of Book IV in the new wording). These two changes consolidate the first class as that of the descendants of the deceased and ensure a real devolution, i.e., the transfer of the inheritance to the younger generations. At the same time, the number of first-class legal heirs is reduced and, thus, the excessive division of property is avoided. It is further recognized that the descendants (grandchildren) come to inherit on the basis of the right of representation, taking the place of the child of the deceased, or the arrival of great-grandchildren when neither the child nor the grandchild of the deceased are alive at the date of opening the inheritance. The children of the deceased inherit in equal succession shares (Article 2178 paragraph (4) from the draft of Book IV). If the child of the deceased was not alive at the time of the opening of the inheritance, his/her children (grandchildren of the deceased from this child) inherit the inheritance share of this child in equal shares. Another change is that, if a child of the deceased is declared unworthy, it does not disinherit his descendants, but, according to Article 2174 paragraph (2), in this case the succession share of the unworthy is collected by his descendants (in the example above, the grandchildren of the deceased). The rule is that if the deceased has no relatives or a surviving spouse or they cannot inherit for certain reasons, the state is the legal heir (art. 2190 of Book IV of the Modernized Civil Code).[7]

With regard to the rules of private international law, the working group, in conjunction with the Ministry of Justice, drafted amendments and additions to the Fifth Book, as well as other legislative acts. To this end, the latest legislative developments at international and European level have been studied and taken into account, and in particular: a) The Law Implementing the German Civil Code, the Civil Code of Romania, the Russian Federation, and Quebec etc.; b) The Hague Convention No. 35 of January 13, 2000 on the international protection of adults; c) The Hague Convention No. 30 of July 1, 1985 on the law applicable to the trust and its recognition; d) UNCITRAL model law on guaranteed transactions, 2016 edition; e) Regulation (EC) No 593/2008 of the European Parliament and Council of June 17, 2008 on the law applicable to contractual obligations (Rome I); f) Regulation (EC) No 864/2007 of the European Parliament and Council of July 11, 2007 on the law applicable to non-contractual obligations (Rome II); g) Regulation (EU) no. 650/2012 of July 4, 2012 on jurisdiction, applicable law, recognition and enforcement of judgments and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of

[7] Codul civil al Republicii Moldova din 06.06.2002 (versiunea modernizată)

Succession. The purpose of the project was to modernize the private international law of the Republic of Moldova, according to the latest European and international trends in the field, to make the relevant legislation more accurate and predictable.

4. Peculiarities of the regulation of legal relations related to other branches of law of the Republic of Moldova

4.1. Family Law

The evolution of family law in the Republic of Moldova can be divided into two stages:

Phase I: Period of application of the marriage and family Code, approved by Law No 914-VII of December 16, 1969 (1991-2000); Phase II: Period of application of the Moldovan family Code No 1316 of October 26, 2000 (2000-present).

Thus, the provisions of the Moldovan family Code No. 1316 of October 26, 2000 are currently in force. This legislation includes institutions such as marriage; the personal rights and obligations of the spouses; the legal regime of the property of the spouses; the contractual regime of the property of the spouses; the legal relationship between parents and children; the rights of the child; the rights and obligations of the parents; the maintenance obligations between family members; maintenance obligation between other members of the family; maintenance obligation between spouses and former spouses; contract on payment of maintenance; protection and education of children left without parental protection.[8]

4.2. Labor Law

In the early 1990s, the Moldovan Parliament adopted the Labor Protection Act of July 2, 1991, the Insurance Act for accidents at work and occupational diseases of December 24, 1999.

On July 29, 1994, after the proclamation of the independence of the Republic of Moldova, the Constitution of the Republic of Moldova was adopted, which in Article 43 stipulates that everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

Transformations in economic and social life after the proclamation of the Republic of Moldova as an independent state, as well as the transition to a market economy, have created new problems for institutions that coordinate, organize and regulate work in the field of occupational safety and health, such as rapid growth of the number of economic agents, the emergence of the private sector, the increase of unemployment, the intensification of the law avoidance phenomenon, the discrepancy between the labor relations regulated in the labor protection legislation in force and those actually existing in society and lately the increase of the role of social partners (patronage, unions).

The Republic of Moldova, in accordance with the rules of international law, has ratified a number of Conventions of the International Labor Organization as its member state. These include Convention No. 81 on Labor Inspection in Industry and Trade, ratified by Parliament on September 26, 1995 and Convention No. 129 on Labor Inspection in Agriculture, ratified on September 26, 1997. Respecting the requirements of the ILO Conventions and in order to harmonize the national legislation with the norms of international law and the legislation of the Community of European States, the Parliament of the Republic of Moldova adopted on May 10, 2001 Law no.140-160 XV on Labor Inspection. By Law no. 139 of June 14, 2013, the name of the administrative authority was modified in the State Labor Inspectorate. On March 28, 2003, the Labor Code of the Republic of Moldova was adopted.

The legal labor relations are regulated through the provisions of the Labor Code of the Republic of Moldova no. 154 from March 28, 2003. Thus, mainly such institutions are regulated, such as: Social partnership in the field of labor; Collective labor agreements and col-

[8] Codul familiei al Republicii Moldova nr. 1316 din 26.10.2000

lective agreements; Labor contract; Working time and rest time; Holidays; Payroll and labor standardization; Warranties and compensation; Work discipline; Occupational safety and health; Liability for breach of labor law; Labor jurisdiction; Supervision and control over compliance with labor legislation.[9]

4.3. Consumer protection law

The Consumer Protection Institution was affirmed with the adoption of the Republic of Moldova Law No. 1453-XII of May 25, 93 on consumer protection, which was an important step in this area and laid the foundations for the legal framework for regulating the legal relations between consumers and economic operators.

The 1993 Consumer Protection Act was a faithful transposition of the protection system provided by the Russian Federation Consumer Rights Protection Act of February 07, 1992, according to which consumer rights were clearly regulated and economic operators were disciplined by economic sanctions.

At that time, a special control body in the field did not exist, but a main role was the authority to store and approve standards on the quality of products and services, namely the Department of Metrology, Standardization and Technical supervision (former "MoldovaStandard"), which later reorganized into the services for Standardization and Metrology (The former Department for Standardization and Metrology), being partly absorbed by the Ministry of Economy in 2006, and on the part of the control functions the main State Inspectorate for Market Surveillance, Metrology and Consumer Protection, which is now, after a series of reorganizations, it is identified as the Agency for Market Surveillance and Consumer Protection.

At the same time as the orientation of our country toward an European vector that led to the elaboration of the European Union – Republic of Moldova Action Plan, the Republic of Moldova is encouraged to adopt a new law on consumer protection, namely the Act No. 105-XV of March 13, 2003, that has partly taken on board the European model of defining and defensing consumer rights and interests.

So far, Law No 105-XV of March 13, 2003 has undergone a number of amendments and additions, with the scope of consumer protection being complemented by other special laws, and some institutions such as unfair terms and distance contracts being regulated in the Civil Code, with its modernization on March 1, 2019.[10]

4.4. Business law

The norms related to the branch of business law are dispersed in many normative acts (Civil Code of the Republic of Moldova, Law on Limited Liability Companies, Law on Joint Stock Companies, etc.). Therefore, there is no single normative act that would regulate business law relations.

From a historical-evolutionary point of view, regarding the business law in the Republic of Moldova, there are three periods: the first - from 1991 until the entry into force of the Civil Code no. 1107 of June 6, 2002, the second - from the entry into force of the Civil Code of the Republic of Moldova no. 1107 from June 6, 2002 until the modernization of the Civil Code, the third - from March 1, 2019-present.

The first period. According to the Civil Code of 1964, citizens could not own means of production, and personal wealth could not be used for profit. Article 102 paragraph (4) of that code stipulated that the personal property of citizens should not be used to obtain income originating not from work. The income obtained from the efficient use of personal property (for example, rent) is unqualified from work, such activity being considered a crime and sanctioned by criminal law. Law no. 460/1991 rehabilitated private property and allowed citizens to own plots of land ..., means of production

[9] Codul muncii al Republicii Moldova nr. 154 din 28.03.2003.

[10] Legea nr. 105 din 13.03.2003 privind protecția consumatorilor.

for carrying out economic activity, production and income obtained, as well as other goods for consumption and production". This rehabilitation led to the unleashing of private initiative. Thus, the legislator, in its logic of liberalization of the economy, adopted Law No 845 of January 3, 1992 on entrepreneurship and enterprise, in which it legalized the entrepreneurial activity and allowed the formation of legal entities governed by private law for profit purposes. This law served as a cornerstone of the market economy and as a basis for business law, as it defined the activity of entrepreneur, established the subjects entitled to carry out such activity (entrepreneurs), regulated the establishment, reorganization and liquidation of these topics. Law no. 845 of January 3, 1992 appeared in the state law system as an independent law, essentially representing a small commercial code. It contained general provisions – private and public law – developed in other legislation, namely the laws on: limited liability companies; cooperative; foreign investment; state-owned company; bankruptcy; and patenting of entrepreneurs in the regulations: companies; the state registration of undertakings, etc. All these acts formed a set of legal rules, appointed by the authors of this work Business Law. In our country, however, as in the states with commercial codes, the whole arsenal of legal mechanisms from the Civil Code was used in the entrepreneurial activity.

The second period. The members of the commission for the elaboration of the Civil Code raised the issue of the distinct regulation, in a separate law, of the relations between the persons who carry out entrepreneurial activity or in provisions incorporated in the Civil Code. The majority was in favor of a unitary regulation, arguing that the elaboration of commercial codes is a thing of the past. It was mentioned in particular that there is a tendency to adopt civil codes, citing as an example the legal systems of Italy and the Netherlands which have unitary civil codes, which has no negative impact on the economies of these countries. Moreover, some states in the former Soviet Union (Russian Federation, Kazakhstan, Georgia) have also developed civil codes that uniformly regulate civil and trade relations.

The legislature supported the working group's ideas while maintaining the proposed structure. The Civil Code of the Republic of Moldova no. 1107/2002 regulates the relations related to the entrepreneurial activity, as well as the legal status of the persons who intend to carry out entrepreneurial activity (hereinafter referred to as entrepreneurs). This fact results from the provision of Article 2 paragraph (4), according to which the civil legislation regulates the relations between natural and legal persons, those who have the quality of professional, as well as those who do not have the respective quality. If Law no.845 of January 3, 1992 and the Civil Code of 1964 coexisted, and this coexistence, in principle, laid the foundation of dualism, the provisions of the Civil Code no.1107 / 2002, however, almost completely replaced those of Law no.845 of January 3, 1992. Although it has not been expressly repealed, most of its rules cannot be applied, as the rules of the Civil Code cover the entire field of regulation. This tacit repeal leads to a change in the private law system, and civil law incorporates private business law rules. However, this reality does not deprive the authors of the right to think about and predict a possible detachment of business law and the formation of a distinct branch of law.[11]

Following the adoption of the Civil Code of the Republic of Moldova on June 6, 2002, a series of normative acts related to the field of business law were adopted, such as the Law on Limited Liability Companies no. 135 of June 14, 2007, Law on state registration of legal entities and individual entrepreneurs no. 220 of October 19, 2007, the Law on the regulation by authorization of the entrepreneurial activity no. 160 of July 22, 2011.

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[11] Baieș, Ș., Roșca N., Dreptul afacerilor, Vol. I., Chișinău, 2004, p. 11-12.

The third period. In the context of the process of substantially amending the Civil Code of the Republic of Moldova, a number of institutions defining the field in question have been modernized, especially those concerning the institution of administration of legal entities, the person of the administrator and its obligations.

4.5. *Intellectual property law*

The creation of the institutions, structures and tools necessary for an efficient activity of protection of intellectual property has been in the center of attention of the leadership of the state of the Republic of Moldova from the very beginning.

Thus, among the first decrees of the President of the Republic of Moldova are those on the establishment of the State Agency for Copyright (ADA) of November 25, 1991 and the State Agency for the Protection of Industrial Property (AGEPI) of May 25, 1992, which constituted the cornerstone of the national intellectual property system.

Subsequently, based on the Code on Science and Innovation and Government Decision no. 1016 of September 13, 2004, the State Agency for the Protection of Industrial Property merged with the State Agency for Copyright, the new institution being named the State Agency for Intellectual Property (AGEPI). Through this institutional unification, in the Republic of Moldova the foundations of a consolidated national intellectual property system have been laid, which includes all the administrative-organizational, normative and infrastructure elements that ensure the protection and capitalization of intellectual property objects (IPO) at national, regional level, and worldwide.

The central role in this process belongs to AGEPI, which organizes and manages the national system of intellectual property protection, develops and implements its development strategy, determines the directions and ensures the implementation of the policy of the Republic of Moldova in the field of intellectual property protection.

At the stage of setting up the national intellectual property system (1992-1995), the core of specialists in the field was created, the first normative acts were adopted, the institution of authorized agents was set up, bilateral and multilateral cooperation with international organizations and patent offices abroad was extended, etc., and accession to the most important international conventions in this field has contributed to the integration of the Republic of Moldova into the international system of protection of intellectual property.

The period 1996-2003 is considered to be the stage of improvement and modernization of the system, which is characterized by the implementation of intellectual property laws and the implementation of all legal protection instruments it provides, by improving the quality of the training and development of a large number of authorized professionals and authorized representatives, by setting up the first association for the collective management of copyright rights, through fruitful cooperation with the WIPO (World Intellectual property Organization) and with the intellectual property offices of other states. At this stage, the most important milestone was the harmonization of the relevant laws with the current rules of international law, in particular with the TRIPS Agreement, which contributed to the accession of the Republic of Moldova to the WTO in 2001. During this period, the Republic of Moldova has signed up to a number of agreements and treaties administered by WIPO or those from the CIS area.

The next steps focused on the consolidation and intense popularization of the system, the elaboration of the Strategy for the development of the national IPO protection system until 2010, of the National Strategy in the field of intellectual property until 2020. This period is characterized by a collaboration close relationship with IP offices in other countries, through multiple activities to promote IP, by attesting the first evaluators of IPOs, but especially by a massive spread of IP knowledge among

business circles, pre-university and university educational institutions and research, public administrative, legal, customs, etc.

Currently, like business law, the rules related to intellectual property law are contained in a number of organic regulations:

- The law on copyright and related rights no. 139 from July 2, 2010
- Law on trademark protection no. 38 from February 29, 2008
- Law on the protection of industrial designs no. 161 of July 12, 2007
- Law on the protection of inventions no. 50 from March 7, 2008
- Law on the protection of plant varieties no. 39 of February 29, 2008
- Law on the protection of integrated circuit topographies no. 655 of October 29, 1999
- Law on the protection of geographical indications, designations of origin and traditional specialties guaranteed no. 66 of March 27, 2008.

4.6. *Competition law*

In the Republic of Moldova, the system of legal Regulation of the protection of competition originated in the early 90's of the 20th century by approving the decision of the Government of Moldovan SSR No. 2 of January 04, 1991 on urgent measures to demonopolize the national economy of the Republic of Moldovan SSR, which declares as one of the main directions of the economy the development of the spirit of competition and the limitation of monopolistic activity. Subsequently, the Law of the Republic of Moldova No. 906 of January 29, 1992 on the limitation of monopolistic activity and the development of competition was approved, which laid the foundations for the system of legal Regulation of competition.

As a result of the fact that the abovementioned law was predominant declaratory, the competition Protection Act No. 1103 was approved on June 30, 2000, which contains broader regulations on anti-competitive acts.

Subsequently, in 2007, from an institutional point of view, the first specialized body in the field of competition was set up - the National Agency for the Protection of Competition. Simultaneously with the development of the national economy, the need arose to adopt a complex regulatory framework, which would correspond to the evolutionary trends at the local level.

Thus, in the full process of absorption, adjustment and implementation of international practices in the field of economic activities, the legislature of the Republic of Moldova adopted on July 11, 2012 the Competition Law was adopted. The normative act in question generated a new order for the protection of competition and competitors, promotion, monitoring, investigation, sanctioning and involvement on the specific competitive environment of the Republic of Moldova.[12] In the same context, the national body empowered with the protection of competition was reformed - the National Agency for the Protection of Competition was transformed into the Competition Council of the Republic of Moldova.

Conclusions

In conclusion, we mention the following:

The history of the evolution of the codification of private law in general and of civil law in particular in the Republic of Moldova is divided into 3 periods: a) 1991-2002 (period of application of the Civil Code of the MSSR from 1964); b) 2002-2019 (period of application of the provisions of the first Civil Code of the Republic of Moldova as an independent state); c) 2019-present (period of application of the modernized Civil Code);

The provisions of the first Civil Code of the Republic of Moldova were partially taken from the model of the Civil Code of the CIS states;

The provisions of the modernized Civil Code have, in general, been taken over from European private law, as well as from supranational acts of a governing nature, without binding legal force (DCFR);

[12] Gorincioi, C., Cercetarea instrumentelor juridice de contracararea a actelor de concurență neloială. Chișinău, 2019, p. 43-44.

The modernization of the Civil Code of the Republic of Moldova (amendments entered into force on March 01, 2019) represented a real revolution of national civil law in the context in which major conceptual changes were made to the normative act in question;

With regard to other branches of private law, we specify that they are, alternatively, (I) codified (family law, labor law) or (I) scattered in different normative acts (consumer protection law, competition law, business law, property law intellectual property).

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CZU 342.727(478-24)
DOI https://doi.org/10.52388/2345-1971.2021.1.02

FREEDOM OF SPEECH AS A FUNDAMENTAL RIGHT WITHIN THE SITUATIONAL CONTEXT OF THE REPUBLIC OF MOLDOVA AND TRANSNISTRIA

Marin DOMENTE
Doctor of Law, University of European Political and Economic Studies „Constantin Stere",
Chisinau, Republic of Moldova
e-mail: *domente.marin@gmail.com*
https://orcid.org/0000-0002-7572-5271

The right to freedom of expression and information is guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in all member states of the Council of Europe. The case law of the European Court of Human Rights (ECHR) applying Article 10 must be considered an international standard of authority on the protection of this human right, including the right to express, transmit and receive opinions and information without the interference of public authorities. Freedom of expression is one of the most cherished constitutional rights in democracies. Freedom of expression affects every aspect of our social and political system and receives explicit and implicit protection in every modern democratic constitution. Moreover, it is frequently mentioned in public discourse and has inspired an impressive volume of legal and philosophical literature. Since its inclusion in Article 19 of the Universal Declaration of Human Rights, the right to freedom of opinion and expression has been protected in all relevant international human rights treaties. In international law, the freedom to express opinions and ideas is considered essential both at the individual level, insofar as it contributes to the full development of a person, and being a cornerstone of a democratic society.

Keywords: *freedom of speech, constitutional freedom, fundamental right, Republic of Moldova, Transnistria.*

LIBERTATEA DE EXPRIMARE CA DREPT FUNDAMENTAL ÎN CONTEXTUL SITUAȚIONAL AL REPUBLICII MOLDOVA ȘI TRANSNISTRIA

Dreptul la libertatea de exprimare și informare este garantat de articolul10 din Convenția europeană pentru protecția drepturilor omului și a libertăților fundamentale (CEDO) în toate statele membre ale Consiliului Europei. Jurisprudența Curții Europene a Drepturilor Omului (CEDO), care aplică articolul 10, trebuie considerată un standard internațional de autoritate cu privire la protecția acestui drept al omului, inclusiv dreptul de a exprima, transmite și primi opinii și informații fără interferența autorităților publice. Libertatea de exprimare se numără printre cele mai prețuite drepturi constituționale din democrații.Libertatea de exprimare atinge fiecare aspect al sistemului nostru social și politic și primește protecție explicită și implicită în fiecare constituție democratică modernă. Mai mult, este frecvent menționată în discursul public și a inspirat un volum impunător de literatură juridică și filosofică. De la includerea sa în articolul 19 din Declarația universală a drepturilor omului, dreptul la libertatea de opinie și de exprimare a fost protejat în toate tratatele internaționale relevante privind drepturile omului. În dreptul internațional, libertatea de a exprima opinii și idei este considerată esențială atât la nivel individual, în măsura în care contribuie la dezvoltarea deplină a unei persoane și fiind o piatră de temelie a societății democratice.

Cuvinte-cheie: *libertate de exprimare, libertate constituțională, drept fundamental, Republica Moldova, Transnistria.*

LA LIBERTÉ D'EXPRESSION EN TANT QUE DROIT FONDAMENTAL DANS LE CONTEXTE SITUATIONNEL DE LA RÉPUBLIQUE DE MOLDOVA ET DE LA TRANSNISTRIE

Le droit à la liberté d'expression et d'information est garanti par l'article 10 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales (CEDH) dans tous les états membres du Conseil de l'Europe. La jurisprudence de la Cour Européenne des Droits de l'Homme (CEDH), appliquantl'article 10, doit être considérée comme une norme internationale d'autoritéence qui concerne la protection de ce droit de l'homme, y compris le droit d'exprimer, de transmettre et de recevoir des opinions et des informations sans ingérence des autorités publiques. La liberté d'expression est l'un des droits constitutionnels les plus chers dans les démocraties.

La liberté d'expression touche tous les aspects de notre système social et politique et bénéficie d'une protection explicite et implicite dans toute constitution démocratique moderne. De plus, il est fréquemment mentionné dans le discours public et a inspiré un volume imposant de littérature juridique et philosophique. Depuis son inclusion dans l'article 19 de la Déclaration universelle des droits de l'homme, le droit à la liberté d'opinion et d'expression est protégé dans tous les traités internationaux pertinents relatifs aux droits de l'homme. En droit international, la liberté d'exprimer des opinions et des idées est considérée comme essentielle à la fois au niveau individuel, dans la mesure où elle contribue au plein développement d'une personne et constitue une pierre angulaire de la société démocratique.

Mots-clés: *liberté d'expression, liberté constitutionnelle, droit fondamental, République de Moldova, Transnistrie.*

СВОБОДА СЛОВА КАК ФУНДАМЕНТАЛЬНОЕ ПРАВО В СИТУАЦИОННОМ КОНТЕКСТЕ РЕСПУБЛИКИ МОЛДОВА И ПРИДНЕСТРОВЬЯ

Право на свободу выражения мнений и информации гарантируется статьей 10 Европейской конвенции о защите прав человека и основных свобод (ЕКПЧ) во всех государствах-членах Совета Европы. Прецедентное право Европейского суда по правам человека (ЕСПЧ), применяющее статью 10, должно рассматриваться как международный стандарт власти в области защиты этого права человека, включая право выражать, передавать и получать мнения и информацию без вмешательства государственных органов. Свобода выражения мнения - одно из наиболее важных конституционных прав в демократических странах. Свобода выражения мнения влияет на все аспекты нашей социальной и политической системы и получает прямую и косвенную защиту в каждой современной демократической конституции. Более того, она часто упоминается в публичном дискурсе и послужила вдохновением для создания внушительного объема правовой и философской литературы. С момента включения в статью 19 Всеобщей декларации прав человека право на свободу мнений и их свободное выражение защищается во всех соответствующих международных договорах по правам человека. В международном праве свобода выражения мнений и идей считается важной как на индивидуальном уровне, поскольку она способствует полному развитию человека, так и является краеугольным камнем демократического общества.

Ключевые слова: *свобода слова, конституционная свобода, основные права, Республика Молдова, Приднестровье.*

Introduction

The actuality and importance of the theme. The main form of organizing the legal relationships between the governmental powers and individuals is expressed in constitutional democracy. In its essence is characterized the presence of a written or unwritten constitution that represents the supreme law in the state and serves as a guarantee against the infringe, even by the governmental powers, of the main human rights, that due to historical and rational circumstances, people cannot be deprived of, such as the right to live, freedom, property rights, equality, education and vote. Freedom of speech is one of the most important, a sine qua non right of all constitutional rights.

With regard to this fact, freedom of speech shall be defined as a fundamental, natural rights

according to which individuals must have the rights to express ideas through oral language and in writing, gestures or images, in any material way and concerning different matters, politics, religion, economy, history, social matters, legal issues, without fearing or suffering censorship or punishment. Even though, despite of how broad this concept might be interpreted, freedom of speech is not conceived as a right that grants the possibility of individuals to express everything that can be uttered. In the field of free speech legal doctrine, for example, the freedom of speech protection shall not be granted to anindividual falsely shouting fire in a public place and causing panic. This eloquent example expresses anopinion that stays as one of the most powerful in free speech thinking and ruling everywhere: freedom of speech is a limited right and does not cover all kinds of public expression.

The right to freeexpression is one of the main fundamental human rights. Consecrated in the Constitution of the Republic of Moldova, it explains on the one hand the importance of application as a mean of guaranteeing the expression of opinion and involvement of civil society in the legal evolution of the state, and on the other hand evokes the qualitative expression of defending citizens' rights and freedoms.

The actuality of the approached subject also lies in the fact that by constitutionalizing the right to free expression, at least two main goals are achieved: firstly, the right of citizens to freely express their personal opinions is guaranteed;secondly, the citizen who resorts to this possibility, is protected by the constitutional norm, against any acts of persecution, sanctioning and punishment for his opinions expressed according to the law.

Free speech is commonly thought to promote democracy. Democracy rests on the principle of self-government, whereby political decisions ultimately belong to citizens either directly or through representatives. In the logic of the system, freedom of speech fulfills central functions, such as allowing voters to make informed choices in elections. Also, thanks to freedom of speech, people can influence public policies, and authorities are subject to criticism that may lead to their replacement. Abuse of power and corruption can be denounced and maybe prevented by fear of revelation. Beyond that, conflicting interests in the community are identified and accommodated in favor of social stability, and individuals and minorities that openly dissent may relieve frustrations and do not need to use violence as an alternative to get power, to fight government programs or to gain attention for reformist claims. Finally, better political deliberations should be taken with the audience of all sides of debate.

The normative regulations, of the studies in the field and of the incomplete fundamental comparative analyzes confer an even more serious connotation on the researched issue, as the institution of the right to free expression presupposes one of the few means of defending the citizens against state abuses. Defective application of legal provisions in this regard affects the interest of society as a whole.

Taking into account the citizen's involvement in the decision-making process through the right to free expression, we express our belief that at the moment the issue of studying and ensuring the free expression of opinion is of unquestionable actuality because:

- we are in a process of transition to democracy, which shows that we are barely learning what democracy is, which implicitly involves ensuring the realization of the right to free expression;

- the mechanism for realizing the right to free expression is in continuous formation with the involvement of new circumstances due to the evolution of social life.

- the legal regulation and the realization of the right to free expression require a permanent analysis both of the legal framework in the matter and of the practical activity of the

authorities in order to assess its efficiency and the responsibility with which it is respected;

- the situation of power in the state and the decrease of the citizen's trust in the state authorities became more and more accentuated, moment that emphasizes more and more the need of viable solutions for the consolidation of the trust and of the constructive dialogue between these subjects.

Taking into account the stated moments, we consider that the scientific investigation of this subject is fully current, in order to elucidate the solutions likely to strengthen the role of the right to petition for the development of democracy.

Destined for the multifaceted research of the right to free expression from the definition of philosophical concepts to the forms of realization it covers in all social relations, there is also the need to substantiate unique concepts of the institution of the right to free expression, with the possibility of correct application. material law through those of formal law.

The actuality of the paper derives from the fact that in the field literature, it will bring its additional contribution through the legal approaches performed, so it is a paper following the implementation of scientific syntheses, research, able to result in clear concepts, rules, procedures, implementation based on strict observance of legal provisions.

Scientific research methodology. The process of investigating issues related to the constitutional guarantees of freedom of expression is based on the study of theoretical, normative-legislative doctrinal material, the jurisdictional experience of the ECHR, as well as the Republic of Moldova.

Regarding the methodological and theoretical-scientific support of the paper, it manifests different research methods, such as:

a) the logical method that represents different arguments on the deductive way;

b) the comparative method, extremely useful in comparing the acts that regulate and guarantee the freedom of expression of opinion;

c) the historical method based on revealing the meaning of past events;

d) the sociological method that includes different sociological instruments;

e) the quantitative method that contributes to the systematization and legislative evidence, storage and systematization of legal scientific information.

Using the methods highlighted above, it was possible to study and analyze the whole complex of issues related to the international and national regulations of the current constitutional of the Republic of Moldova on the right to freedom of opinion and expression.

Freedom of expression is among the most respected and appreciated constitutional rights in constitutional democracies. It was adopted and applied in almost allmodern and contemporary constitutions, as well as in international treaties establishing the main human rights and liberties. In most of cases it is classified as an essential right protecting individuals from abuse and infringe of other rights by the state. It is considered to be fundamental to contemporary democracies either in the idea that it is a premise to the emergence of constitutional democracies and/or that it is closely related to essential democracy values such as independence, individual sovereignty, dignity and liberty. At the same time, the goal of what speech is defined as, what speech should to be protected, the importance or the value given to the protection of freedom of speech with regard to other rights or policy concepts, and the reasons of its protection are highly disputed. These disputes have essential political and legal implications and are reflected in the differential protection granted to speech in different jurisdictions.

Freedom of speech, case of the Republic of Moldova and Transnistria

The maindoctrinal and theoretic issue is to determineif the freedom of speech should be protected in a wider manner or in a different maned than non-speech activities. While pro-

tecting the freedom of speech we give more importance to speech related issues than to non-speech ones. The doctrinal debate with regard to the arguments for protecting speech also discover of what can be considered as speech. Only the action of expressing thoughts and ideas that at emphasize and give value to the concepts underlying the protection of speech could be considered as speech. As a consequence, recognizing of the standardsthat are the basis of the protection of free speech also determines what actionscan be considered as speech. That is why in legal and normative definitions we can find what namely is considered speech and what is considered protected speech, notions that are often interrelated.

The issue of what can be considered free speech is one of the most controversial theoretical and legal disputes. Often the idea of what could be considered speech is determined by normative regulations. Even though, it is obvious that the discussed term is much too narrow to describe all the actions that are usually named by the right to free speech. The usual meaning of speech does not cover in full the concept of free speech protected nationally and internationally. Actions likewaving a manifest during a meeting, promotion of political parties and ideology by wearing the signs of that party and production of art related objects are also under the protection of the right to free speech. Differently, there are actions that are namely speech that are not under the protection of the right to free speech, such as social hate promotion. In many cases the freedom of speech gives protection tospoken activities like the activities that convey ideas, expresses feelings, or express attitudes. Yet not all activities in the field of communication are under protection, for example the physically attacking a person as an expression of racial and/or sexual hatred is not protected by the right to free speech even if it is an expression of thought.

Freedom of speech and expression covers a much wider concept and phenomenon that is expressed in different fundamental rights as speech, religion, equality, etc. So, the protection given by the freedom of speech and expression is a supplementary guarantee and covers other rights. One of the importantissues of the doctrine of rights and a theory arguing the protection of any given right is to reason the arguments underlying the differential protection of actions, all of which tend to cause similar benefits and generate similar harms. In the context of freedom of speech and expression, it is most important to argue the reasons determining the differential protection of spoken and non-speech actions that have the same autonomy.

Among the usualargumentswith regard to the freedom of speech is that the freedom of speech is a premise for any constitutional democracy and free society, because the concept of constitutional democracy is debatable, it is to be eloquent that there are more different constitutional democracy-based justifications for freedom speech and expression. The main advantage of a constitutional democracy is the creation of the procedure of guarantee of equity. Or constitutional democracies are based on the idea that most of the decision are the expression of the people and are directed for the development of the society.That is why freedom of speech and expression guarantees the right of individuals that are not exponents of the state power to influence the decision process and/or to protect themselves from abuse of state power. Freedom of speech and expression is fundamental through those arguments and basic for the development of not only a constitutional democracy, but as well as, a participative democracy.

In order to develop democracy pluralistic state has to provide an overview of the principles on the basis of which it develops diverse options and program policy of governing the country, to organize activities transparent to government and to all public authorities, found its embodiment in expressing the diversity of

conceptions and opinions that are interposed between the individual and the state in the relations that take place between the members of the society and various state and non- state institutions [8, p.37].

Ensuring pluralism in all species it's in particular pluralism political, is regulated by multiple documents and instruments international because at base basis philosophy of pluralism it is the very idea of freedom of the individual in the sense politically. With the freedom policy in her company pluralistic citizen continues to be manifest as in -a framework pluralistic institutionalized state [2, p.26].

Being the center of numerous controversies and debates at level national and international, both from the perspective of theoretical, but also practical, theme achievement freely the right to express freely the opinion, presents a real interest, individually and collectively, create a framework generous the discussion also involves the need to clarify the report with other rights or interests fundamental belonging authorities national or individuals [6, p.44].

Freedom of expression of opinion is a right integrator, a right generator, which generates and other rights and freedoms are inextricably linked with each other and there only in whole. In this sense, are the relevant statements of Frederic Sudre who believes that freedom of expression of opinion is both a right in itself and an as indispensable or injurious to the realization of other rights (freedom of speech is indispensable freedom of assembly, but may bring prejudice to the right to life private); both a right individual that takes the freedom spirit of each person, and a law convivial, allowing communication with others [8, p. 351].

The subjective right is the prerogative, conferred by law in virtue of which the holder of the right can and sometimes even must, to carry out a certain conduct and to ask others conduct a conduct proper law of his, under the sanction provided by law, in order to capitalize the interest staff directly, born and actual, legitimate and legally protected, the agreement with interest general and the rules of social coexistence [3, p.136].

Article 8 of the Constitution of the Republic of Moldova sets available through which undertakes to comply strictly and in good faith the obligations that in return the treaties to which it is part, and regulation of constitutional of Article 32 guarantees all member states the right to free expression of opinion.

Limits the exercise of the right to freedom of opinion and expression specifying -the fact well known that any right ends there where begin the rights of others. We attribute this sentence full legal quality, because, really, every holder of rights and freedoms has obligations, both in terms of legal, and morally to exercise rights in such a way that it should not to affect the rights and freedoms of others. Being disseminated in the public, it is normal that freedom of expression should be subject to some limitations of the freedoms of others and the needs of defense of the public interest [3, p. 24].

Organizing policy of any social human community gives rise to a complex variety of relationships between governors and the governed, to which regulation by rules has as objective to ensure a harmonization of interests, specific to different socio-professional categories, and exclusion ofpotential conflicts generated by the violation of rights and legitimate interests of citizens. No society can claim that has not failed to totally meet the full requirements of group or personal interests of people and to prevent abuses of the public administration, violation of rights and legitimate interests of citizens protected by law. This is the reason for which constitutions establishe, in general, access to free justice and the right of any person aggrieved by an authority public to address court, to have their recognized rights violations by public government, or the right of citizens the address petitions topublic authorities [1, p.121].

In terms of realization and application of law mentioned we present and analyze the latest developments of this right both in the Republic of Moldova, as and in Transnistria.

Case study Transnistria

Authorities closely monitor and control the public media, and Sheriff Enterprises dominates private broadcasting, leading to widespread self-censorship. The territory's few independent print outlets have limited circulation. Critical reporting can result in reprisals including criminal charges, and the government also uses bureaucratic obstruction and withholding of information to inhibit independent journalism [10].

Legislation adopted in 2016 gave authorities even greater control over state media outlets, including the power to appoint editorial staff, and enabled officials to limit media access to their activities and bar the use of recording devices [10].

Travel restrictions related to COVID-19 further limited access to the territory for Moldovan and foreign journalists during 2020. Separately, telecommunications regulators in January suspended the license of LinkService, a smaller competitor of Transnistria's leading internet service provider, which is owned by Sheriff Enterprises. An appellate court blocked the decision in April and allowed LinkService to continue operating at least through the end of the public health emergency [10].

Legal restrictions on certain kinds of speech discourage free discussion. Among other provisions related to defamation or insult of the authorities, the criminal code penalizes public expression of disrespect for the Russian peacekeeping mission [10].

Speech-related prosecutions of dissidents, activists, and ordinary social media users have become more common in recent years, inhibiting expression by other residents. In addition to the cases against Communist Party politicians during 2020, a criminal investigation regarding incitement to extremism was opened in March against Larisa Kalik, who had recently published a book documenting abusive conditions in the Transnistrian military. She fled the territory as a result. Also in March, it was reported that pensioner Tatiana Belova and her husband, SergheiMirovici, had been sentenced to three years in prison for "extremism" and "insulting the president" via posts on Telegram in 2019. Belova was released in July, but Mirovici reportedly remained in prison [10].

Case study Republic of Moldova

The media environment is dominated by outlets connected to political parties. With few exceptions, nationally broadcasting television stations are owned by people affiliated with political parties. Reporters have previously faced difficulty accessing publicly important information and threats of legal action from public figures and politicians [9].

Journalists were also affected by the government's COVID-19 response. In March 2020, the Moldovan media regulator attempted to restrict outlets from quoting unofficial sources, before rescinding that decision a day later. Journalists also faced longer waits for the fulfillment of access-to-information requests due to COVID-19-related policy changes [9].

There is a good degree of academic freedom in Moldova. However, the Orthodox Church strongly indoctrinates the Moldovan educational system, with educational officials at all levels frequently promoting the church and Orthodox beliefs [9].

Individuals have generally been able to engage in discussions of political nature without fear of retribution. However, under the PDM's rule, there were credible concerns that criticizing the government or affiliated actors could lead to damaged career prospects. Private discussion was curtailed by surveillance against the opposition, journalists, and civil society actors. However, these fears subsided after the 2019 fall of the PDM government [9].

Conclusions

Mass communication became particularly of importance in politics and business to governments and society, due to the possibilities offered, to inform and influence people, which has caused a certain blurring of forms of traditional ways of communication. Political parties, especially those who are in government, but also those in opposition, sre always in competition of disinformation, manipulation of opinion by creating opinions favorable to work their interests or ideology on which they promote. Misinformation must be banned and sanctioned.

Developing ofmodern technology in the means of communication made the society to confront with issues of regulatory policies particularly complex ones, in connection with written media, with broadcasting and television which are of nature to exert a great influence on public opinion. Thus, misuse can bring to significant harm to the rights and freedoms of the individual, as well as conduct the bases of democratic public life.

The information, in some cases, infringes honor, dignity and reputation of professional, and may be distorted by the critics, by manipulating opinion, by misinformation, by hiding the truth, through surveys of opinions or even by silence. Such a situation should be banned and imposed sanctions by standards legislation.

The right to free expression is the main topic discussed in many works of local as and foreign scientists which is represented as a mean of preventing an injustice.

In connection with democracy, freedom of speech tends only to justify the coverage of ideas and messages with political content or interacting in the political process. So, if democracy was the only basis for protecting freedom of speech, things like self-help literature, commercial advertising, sports journalism and entertainment magazines would be left out of perspective. More important: the same could happen with allegedly defamatory or invasive statements. Probably, these types of speech would be understood as not belonging to the constitutional worries, and in this case, greater or lesser freedom related to them would then depend on the legislative power. But this is not how things are: freedom of speech is valued for reasons other than democracy, and then, it justifies much more than just political messages.

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CZU 342.7
DOI https://doi.org/10.52388/2345-1971.2021.e1.03

INTERACTION OF CONSTITUTIONAL GUARANTEES OF HUMAN RIGHTS WITH POWER, ECONOMY AND CAPITAL

Alexandr TERNOVSCHI
PhD student, University of European Political and Economic Studies „Constantin Stere",
Chisinau, Republic of Moldova
e-mail: *alex-ternovsky@yandex.ru*
https://orcid.org/0000-0002-0636-4628

The article contains a study in the field of interaction and dependence of constitutional guarantees of human rights in the Republic of Moldova on power, economy and capital. An example is given of the set of meanings and forms of this democracy, the measure, level and values of the citizens who make up a collective or make up the crowd, from the point of view of organizing the means by leading the people over the state. The causal relationship is analyzed between the interaction and the direct dependence of the implementation of the constitutional norms on the political will, the level of the economy, including the interest and purpose of the capital dictatorship. This prism studies the real issue of democracy in the Western sample regarding the completeness of citizens' expectations. The article provides an assessment of democratic values in their presence, ie form. The most frequent and richest opinions, ideas and doctrines are evaluated, for the general ideological purpose, in order to effectively achieve objectives, including the subsequent onset of certain consequences. A comparative analysis is made regarding the opinions of other authoritarian specialists in this field.

Keywords: *democracy, Constitution, human rights, power, economy, capital, state of law.*

INTERACȚIUNEA GARANȚIILOR CONSTITUȚIONALE A DREPTURILOR OMULUI CU PUTEREA, ECONOMIA ȘI CAPITALUL

Prezentul articol conține un studiu în domeniul interacțiunii și dependenței garanțiilor constituționale ale drepturilor omului în Republica Moldova de putere, economie și capital. Autorul analizează setul de sensuri și forme ale acestei democrații, măsura, nivelul și valorile cetățenilor care alcătuiesc un colectiv sau o mulțime de persoane, din punctul de vedere a mijloacelor și metodelor de aplicare a principiilor democratice prin prisma implicării cetățenilor în conducerea statului. Relația cauzală este analizată între interacțiunea și dependența directă a punerii în aplicare a normelor constituționale prin voința politică, nivelul economiei, luând în considerație interesul și scopul capitalului. Este pusă în discuție și problema reală a democrației de tip occidental cu privire la așteptările cetățenilor. Articolul oferă și o evaluare a valorilor democratice în actuala lor formă și conținut. Sunt analizate cele mai frecvente și independente opinii, idei și doctrine. La fel, se efectuează un studiu din punctul de vedere general ideologic și obținerea unor efecte obiective, inclusiv apariția ulterioară a anumitor consecințe. Se face, la fel, și o analiză comparativă cu privire la opiniile altor renumiți specialiști în acest domeniu.

Cuvinte-cheie: *democrație, Constituție, drepturile omului, putere, economie, capital, stat de drept.*

INTERACTION DES GARANTIES CONSTITUTIONNELLES DES DROITS DE L'HOMME AVEC LE POUVOIR, L'ÉCONOMIE ET LE CAPITAL

Cet article contient une étude dans le domaine de l'interaction et de la dépendance des garanties constitutionnelles des droits de l'Homme en République de Moldova vis-à-vis du pouvoir, de l'économie et du capital. L'auteur analyse l'ensemble des significations et des formes de cette démocratie, la mesure, le niveau et les valeurs des citoyens qui composent un collectif ou beaucoup de personnes, du point

de vue des moyens et des méthodes d'application des principes démocratiques à travers le prisme de l'implication des citoyens dans la direction de l'État. La relation causale est analysée entre l'interaction et la dépendance directe de la mise en њuvre des normes constitutionnelles par la volonté politique, le niveau de l'économie, en tenant compte de l'intérêt et du but du capital. Le véritable problème de la démocratie de type occidental en ce qui concerne les attentes des citoyens est également analysé. L'article fournit également une évaluation des valeurs démocratiques dans leur forme et leur contenu actuels. Les opinions, idées et doctrines les plus courantes et les plus indépendantes sont analysées. De même, une analyse est effectuée du point de vue idéologique général et de la réalisation d'effets objectifs, y compris l'apparition ultérieure de certaines conséquences. Une analyse comparative est faite sur les opinions d'autres spécialistes célèbres dans ce domaine.

***Mots-clés:** démocratie, Constitution, droits de l'homme, pouvoir, économie, capital, état de droit.*

ВЗАИМОДЕЙСТВИЕ КОНСТИТУЦИОННЫХ ГАРАНТИЙ ПРАВ ЧЕЛОВЕКА С ВЛАСТЬЮ, ЭКОНОМИКОЙ И КАПИТАЛОМ

Статья содержит исследование в области взаимодействия и зависимости конституционных гарантий прав человека в Республике Молдова от власти, экономики и капитала. Приводится пример множественности смыслов и форм этой демократии, меры, уровня и ценностей граждан, составляющих коллектив, либо образующих толпу, относительно организации способов её применения, при народном управлении государством. Анализируется причинная связь между взаимодействием и прямой зависимостью исполнения конституционных норм от политической воли, уровня экономики, включая интерес и цель диктатуры капитала. В этой связи, изучена актуальная проблема демократии западного образца относительно полноты ожиданий граждан. В статье приводится оценка демократических ценностей в их настоящем виде, смысле и форме. Оцениваются наиболее распространенные и состоятельные мнения, идеи и доктрины - от их идеологического общего предназначения до фактически достигаемых целей, включая последующее наступление определенных последствий. Осуществлен, также, сравнительный анализ относительно мнения других авторитетных специалистов в этой области.

***Ключевые слова:** демократия, Конституция, права человека, власть, экономика, капитал, правовое государство.*

Introduction

The article contains a study in the field of interaction and dependence of the constitutional guarantees of human rights in the Republic of Moldova on the government, economy and capital. The causal relationship between the interaction and the direct dependence of the implementation of constitutional norms on political will, economy and capital is analyzed. Through this prism, the actual problem of western-style democracy regarding the fullness of citizens' expectations is studied. The article provides an assessment of democratic values in their present type, meaning and form. A comparative analysis is carried out with respect to the opinions of other specialists in this field. All significant aspects, ideas and goals that take place from real theoretical democratic prisms are analyzed, their path and the final effect of actions are examined, including the difference between the expectation from the initial idea to the result obtained, including the hidden meaning of the democratic project as a whole. A comparative analysis is carried out in conjunction with the opinion of other experts in this field.

The relevance of this study is due to the fact that most states are striving now to create a democratic state of law, where the main value is human rights and democracy through delegated delegates. The importance of studying this area comes from the direct dependence of these constitutional guarantees on the manifestation of political will, in proportion to the interest of capital and the level of the state's economy.

The purpose of the study is to establish and investigate the causal relationship between the constitutional guarantees of human rights regarding the manifestation of political will, based on the possibilities of the state's economy and the preferences of capital.

The methodological basis of the work consists of well-known principles arising from the task, which includes the dialectical method and historicism, the study and analysis of law enforcement practice, and others.

The structure of the work is determined by its goals and objectives. It consists of a scientific study of the facts, their analysis, conclusions and a bibliographic list.

Western democracy, human rights and guarantees of the Constitution of the Republic of Moldova

The article conducts a study in the field of implementation of the values of western democracy, human rights and freedoms guaranteed by the Constitution of the Republic of Moldova, its interaction and dependence on political will, the level of the economy of the state and capital.

In the Preamble of the Constitution of the Republic of Moldova, it is proclaimed the main law of the state. The first section of the Constitution "Basic Principles" declares the provision that "the Republic of Moldova is a democratic constitutional state in which the dignity of a person, his rights and freedoms, the free development of the human personality, justice and political pluralism are the highest values and are guaranteed" [1]. This provision is the fundamental basis of the constitutional order of the Republic of Moldova.

The first idea of democracy as a form of government arose in ancient Greece. Ancient Greek philosophers argued that all people are equal from birth and have the same rights granted by nature [2]. The citizens of ancient Greece considered the freedom of a person and his/her inalienable rights, which belong to him/her from birth, to be the most important. This freedom was guaranteed by private ownership of property, including land. Therefore, a free market developed in Greece, which provided its inhabitants with a higher standard of living than that of neighboring peoples. The democratic traditions of citizens' meetings allowed a large number of them to take the initiative, which gave them a sense of freedom, the ability to directly influence domestic and foreign policy, all the important issues of their city-state, both the life of the people and its relations with neighbors. In this ancient society, few people enjoyed civil rights, equality of rights and duties was recognized only within the community of citizens. Great was the degree of social control over the private life of the individual. The territory of the city-state was not supposed to expand, otherwise it would be impossible for each citizen to participate personally in the people's assembly. Accordingly, the number of full citizens should not increase beyond a certain limit. In the above sense, a certain democratic qualification was retained, which guaranteed quality over quantity.

The fundamental principles of western democracy considered unacceptable the democratic qualification of the institute of "Athenian" democracy, in the conditions of the emergence of state formations, and presented a different model of democratic value, in which human rights are recognized for every citizen, that all citizens and in any quantity have the right to take part in the people's assembly and to determine the fate, both within their state and in its foreign policy. At the same time, despite the famous formula of the sophist Protagoras that "The measure of all things is a person" [3], the meaning of western democracy excluded any qualifications and guaranteed the dominance of quantity over quality, in the field of public control of

the people’s assembly, by definition, internal fate of the state, and its foreign policy.

Today, the democratic sign of the rule of law is the real provision of the rights and freedoms of the individual. The level of implementation of constitutional guarantees of human rights and freedoms is identified with its maturity and compliance with the rule of law. It is important to note that in practice, the dominant right in recognizing any state as legal and democratic, by default, is delegated to the United States and its individual European satellites, which constitute the axis of the civilized world. It is the United States that is indisputably considered the progenitor of the western model of democracy and dominates its exports around the world. In this sense, the popular formula for success is successfully exported, that the best guarantee of human rights can be a law that is designed to protect the most important interests of the individual, clothed in the form of law. However, it is believed that a truly democratic legal state endows its citizens with both rights and freedoms, but also imposes certain duties on them. It is very important that the rights and freedoms of citizens be appropriately guaranteed, otherwise they turn from good into empty slogans of no value. In the ideal state of law, citizens expect the principle of domination of mutual responsibility between the state and the individual. Defining the measure of individual freedom in the laws, the state limits itself within the same limits in its own decisions and actions, and, accordingly, on the contrary, lawful decisions and actions of state bodies in certain cases can limit the freedom of the individual. Thus, the institution of the rights and freedoms of the individual is fundamental in the field of constitutional law of the rule of law.

However, an analysis of the theory and practice of applying the western model of democratic values makes it possible to clearly demonstrate the inappropriate correlation dictated by theory, from the actual position of the vaunted principles of the western civilized world, which should take place in modern life for every citizen, but de facto turn out to be accessible only to a small number of them. It is in this sense that the western principle of democracy indisputably shows the predominance of quantity over quality and easily transfers power to the crowd, which is quickly replaced by money. This is reminiscent of the well-known aphorism: “The crowd is criminal and senseless, they shouted: “Crucify Him (Christ)!”, in which they believed.” Therefore, not a democratized crowd should be free, but a high-quality team capable of organizing work on the task at hand.

Practice shows that during the thirty years of independence of the Republic of Moldova, the imported version of western democracy rapidly transferred power to the people through parliamentarism, which, in turn, did not realize the cherished dream, but gave rise to global confusion, which it uses to distort reality in the eyes of the people in order to enjoy the fullness of this power and administrative comfort, pursuing the goal of achieving absolute power, in the struggle for which, boldly uses intrigues and political upheavals.

In particular, the partially unenforceable constitutional guarantees of the Republic of Moldova serve as a good example, which is confirmed by various annual reports on the observance of human rights in the Republic of Moldova, both by the OSCE, the US State Department, and a number of other accredited international and European organizations. At the same time, a fair question arises about the expediency and good intentions of the requirements of the civilized world to legally bring the constitutional guarantees of human rights and freedoms, in particular, the Republic of Moldova, in line with international European standards, but in the absence of real

opportunities and corresponding potential from the state.

In this spectrum, there is an example of direct access to the use of western democratic values by those citizens who have capital and vice versa. In practice, every step from birth itself - the purchase of diapers, vests, and up to the memorial service (funeral ceremony), a modern citizen, is associated with capital. Thus, access to education and receiving special higher education at the expense of the state depends on the abilities of the individual, that is, paid for the majority, to medical care - after buying a policy, to justice - through the payment of a lawyer. That is, the listed benefits are available to owners of capital, and their quality level also depends on its quantity. In the absence of the financial capacity of a citizen, the state does not provide assistance in purchasing a medical policy, paying for lawyer services in the field of civil law, and in criminal proceedings, practice shows that there are no guarantees for the quality of legal assistance provided by the state, but at the same time, the state directly guarantees a decent citizen life, including food, clothing, housing, medical care and necessary social services. As a paradox, but the vast majority of citizens receive pensions and disability benefits significantly below the subsistence level determined by the state itself. That is, the vaunted western democratic values of a decent life, human rights and freedoms are adorned with appetizing delicacies in an attractive but inaccessible window for most citizens. Thus, the stated meaning convincingly argues the essence of the magic of the basis for the growth of popularity of western democracy among citizens, which outwardly easily provides power to the people, but quickly replaces it with money.

Ever since the significant date of the independence of the Republic of Moldova, when the Declaration of Independence of the Republic of Moldova was proclaimed, which affirms the values of the centuries-old aspiration of a people to live in a sovereign country, declaring its independence, recognizing the rule of law, civil peace, democracy, the dignity of people, their rights and freedom, the development of the human personality, justice and political pluralism as the highest values, realizing their responsibility and duty to past, present and future generations, reaffirming their adherence to universal values ... it seemed that the long-awaited moment had come when a tired people could rise up and proudly spread their chest, inhale the fresh air of encouraging change and realize the acquired right to a better life, by electing their people's delegates in free and democratic elections by secret ballot, in the conditions of guaranteeing freedom of expression, which has become the basis of the meaning of a modern democratic state governed by the rule of law. For the first time, the will of the people to elect their people's representatives to public authorities and to govern the state was guaranteed by the Constitution of August 27, 1994. This resulted in the Parliament becoming the highest representative body of the people of the Republic of Moldova and the sole legislative authority of the state. The citizens of the republic began to live in anticipation of an early onset of abundance and well-being on the western model.

Despite the above successes and constitutional guarantees, one of the most important, little-studied and urgent problems of the Republic of Moldova remained - this is an irrational result from the adopted western democratic form of democracy, which is confirmed by the indicators of the lack of development of the republic and the depressing standard of living of citizens, despite the hopes placed from received freedom of speech, democracy, elections of people's delegates, given their high and professional organizational level,

including a well-functioning mechanism for their implementation. All rational calculations and attempts to bring the republic out of the crisis in an appropriate way failed, which led to disappointment and a rapid decline in people's trust in their representatives in government. And, accordingly, reduced the activity of citizens' participation in electoral processes. The main reason for the problem in the above sense is that de facto representatives delegated by the people to public authorities are the nominees of capital, rarely have special knowledge and experience in the field of government, take active steps to win electoral sympathy from citizens, and therefore live mostly in a rigid election calendar than under the control of the society itself and the law. It is fair to note the ineffective reforms of the supreme legislative body, especially in the field of privatization, which had a fateful impact on the economy and, as a result, on the hopeless prospects of the Republic of Moldova.

Through privatization, state property (industries, plants, factories, etc.) was transferred into the "private hands" of the working people, which predictably led to their rapid bankruptcy and subsequent resale, at an artificially low price, to a syndicate. As a result, the state was left without industry, without production and without money, and the people lost their jobs and the opportunity to support their families.

In this sense, it is fair to recall how the classics described the practice of parliamentarism, which is still relevant today: "The main occupation of deputies is endless ranting and luring bribes" [4]. A similar opinion was shared by Pobedonostsev K.P. who expressed the idea that "Parliamentarism is the greatest deception of our time, generating the venality of the media, political parties, officials and the falsity of bourgeois elections" [5]. Quite close to them and prophetically wisely about western human rights, V.I. Lenin spoke: "Law is the will of the ruling class, elevated to law." That is, interpreting this formula according to modern realities and legal form, the following is obtained: "The ruling syndicate of capital owners forms legislative bodies with its nominees, who adopt the necessary laws that form a legal system that completely denies the will and interests of the people, but wholly protects and serves the interests this syndicate". This explains the legal crisis that has set in in the republic, in which, in order to protect the violated right of an ordinary citizen, the specified person goes to court, but there the will of the ruling syndicate, erected into a law, operates, the limits of which do not fit the interest and duty to protect the natural rights and freedoms of a person assigned to him/her from birth, as well as the fulfillment of prescribed rights guaranteed by the Constitution, national laws and international agreements.

The stated idea was exhaustively explained by Joseph Goebbels, who noted that "Jurisprudence is a corrupt girl in politics" [6].

Our contemporary B. Berezovsky put it even more concretely: "Capital employs power. The form of employment is called "election". This phrase seemed to me informative, since we are still naive in elections" and "Politicians are wage workers of entrepreneurs" [7].

For an objective reason, in recent years, the topic of citizens electing their representatives to government bodies and, accordingly, the invention of methods of people's control over them is becoming increasingly relevant, there is growing interest and importance for studying this mechanism in a more detailed and in-depth method. The reason for this is not the onset of positive changes expected by citizens. Over the past three decades, economic, social, scientific and cultural regression has been seen, the problem of redressing

the citizens of the republic, their manipulation and use of cunning, by a small group of the syndicate, which is in tandem with the people's delegates, on whom sincere hopes of change were pinned, is increasing every year, by being elected in open, democratic and free western-style elections.

This problem is mainly due to the fact that the foundation of Western democracy is based on capitalism. At the same time, the interests of capital are guaranteed by Article 126 of the Constitution of the Republic of Moldova [1], which stipulates that the economy of the Republic of Moldova is a market economy, socially oriented, based on private and public property and free competition. That the state should ensure freedom of trade and entrepreneurial activity, protection of fair competition, creation of favorable conditions for the use of all production factors. In other words, the state by the basic law guarantees the criterion for making economic decisions on the desire to increase capital and to obtain profit, which in general constitutes capitalism.

Taking into account that the economy of the Republic of Moldova is a market one and legally guarantees the state's desire to increase capital and make a profit, then a reasonable conclusion suggests itself that this is a capitalist economic system. As you know, the main rule and even the law of the capitalist economy is the growth of capital - the increase in profits. The 19th-century English publicist T. J. Dunning wrote: "Capital … shuns noise and scolding, and has a timid nature. This is true, but it is not the whole truth. Capital is afraid of no profit or too little profit, just as nature is afraid of the void. But once sufficient profits are available, capital becomes bold. Provide 10 percent and capital is ready for any use, at 20 percent it becomes lively, at 50 percent it is positively ready to break its head, at 100 percent it defies all human laws, at 300 percent there is no crime that it would not risk, although would be under pain of the gallows. If noise and scolding are profitable, capital will contribute to both. Proof: smuggling and slave trade" [8].

Based on this, the sincere conscientiousness of the struggle for human rights and freedoms in a democratic state under a capitalist economy is rightly called into question, given that for the place of obtaining the expected profit, this area requires regular and significant investments, and therefore unrecoverable waste. Naturally, the ability to qualitatively observe human rights and freedoms largely depends on the level and stability of the state's economy. Another thing is when there is simply no economic opportunity and the state is predictably doomed without external material assistance, and the senior partners - the axes of the civilized world, consciously insist on the adoption of initially impossible, but declaratively humane laws, and international agreements in the field of human rights protection, which do not contribute to an increase in capital. With a high degree of probability, a reasonable conclusion arises that in order to definitely and effectively correct the political actions of the authorities, as well as to influence the management of some internal processes of a sovereign state, "senior" mentors in democracy, represented by external partners, timely manipulate national omissions in this area, state them in their annual reports, sanction them through the international institution of the ECHR and professionally manipulate both the change in public opinion and the mass attitude of the people towards this national power - which is under the electoral dependence of voters, thus prompting this "people's" power to show political will in the direction they need. At present, the indirect decision-making mechanism in the Republic of Moldova largely depends on the expertise of the PACE, the Venice Commission, the permission of the IMF, the coordination

with the World Bank, the approval of NGOs that exist on western grants. For example, in early February 2016, Moldovan Prime Minister Pavel Filip honestly admitted: "The draft budget has already been developed, discussed with entrepreneurs, trade unions and patronages. His draft has already been handed over to the deputies. There should be a final discussion with the IMF" [9].

It is fair to say that, to a certain extent, the political will of the state authorities, in order to preserve their administrative position, is forced to comply with the minimum standards of human rights in the field of social guarantees for the payment of pensions and salaries to state employees, otherwise state chaos will begin, in which this power will hardly hold on. In order to stabilize their power in this sense, the people's delegates had to place the republic as a satellite of a candidate member of states from the family of the civilized world, which guaranteed regular financial assistance, which is crucial in meeting the minimum standards for maintaining the viability of the state. Thus, thanks to the political will that was shown, international norms and standards on human rights were enshrined in the legislation of the Republic of Moldova at the national level. During this period, the equality of all people, their right to life, freedom and well-being was proclaimed. The state power guaranteed to all citizens of the republic, foreign citizens and stateless persons, the rights and freedoms provided for by the Constitution, the ECHR, including other legislative acts, generally recognized principles and norms of international law. Equal opportunities and rights to carry out their activities were guaranteed to political parties, socio-political organizations and movements, citizens and national, ethnic and linguistic groups operating within the framework of the Constitution, social, political, economic, cultural rights and freedoms were guaranteed. In affirmation of its commitment to the universally recognized principles and norms of international law and its desire to respect human rights, The Parliament of the Republic of Moldova expressed its political will and, by a resolution of July 28, 1990, adopted the decision on the accession of the Republic of Moldova to the Universal Declaration of Human Rights of December 10, 1948, and also adopted the Decision on the Accession of the Republic of Moldova to the International Legal Instruments on Human Rights September 28, 1990, the International Covenant on Civil and Political Rights of December 16, 1966 (July 28, 1990) were ratified; International Covenant on Economic, Social and Cultural Rights, December 16, 1966 (July 28, 1990); European Convention for the Protection of Human Rights and Fundamental Freedoms of October 4, 1950 (July 24, 1997), as well as a number of other international instruments regulating basic human rights standards in specific areas, such as the rights of women, children, refugees, national minorities and racial groups, including a large number of International Labor Organization (ILO) conventions. However, the practice and level of implementation by the state of the listed norms is stated by the depressing decisions of the ECtHR against the Republic of Moldova, the reports of the OSCE, the US State Department and many others. The totality of the above indicates that in a capitalist, democratic, rule of law state, the *de jure* side differs significantly from the *de facto* side.

In this sense, the best example of the abolition of the effectiveness of the institution of people's power and the weakening of the values of human rights and freedoms proclaimed by western democracy is the providence of one of the most revered USA presidents, Abraham Lincoln 1809-1865, who, shortly before his death, expressed prophetic fears about the suppression of political will of the

national power by the dictatorship of capital: “In the near future there will be a turning point that worries me extremely and makes me tremble for the fate of my country ... The coming to power of corporations will inevitably entail an era of corruption and decay in the highest organs of the country, and capital will on the darkest instincts of the masses, until all national wealth is concentrated in the hands of a select few - and then the end of the republic” [10].

What is of particular interest in the study of this area is the fact that similar conclusions on the desecration of citizens by the dictatorship of capital, with the actual exaltation of western democratic values of human rights and freedoms, were multilaterally, reasonably and consistently characterized by a Russian revolutionary, Soviet political, state, military and party activist, Generalissimo, General Secretary of the Central Committee of the CPSU Joseph Vissarionovich Stalin (1879 - 1953). An excerpt from the political report of the Central Committee on the world crisis, which on June 27, 1930 it made to the 16th Congress of the All-Union Communist Party of Bolsheviks: “If capitalism could adjust production not to maximize profits, but to systematically improve the livelihood of the masses if it could turn profits not to satisfy the whims of the parasitic classes, not to improve methods exploitation, not to take out capital, but to raise the wealth of workers and peasants systematically, then there would be no crisis. But then capitalism would not be capitalism. To destroy crises, we must destroy capitalism” [11].

Conclusions

Applying the stated formula to the current circumstances of the Republic of Moldova, in which a significant part of the economy is under the financial dependence of western partners, and they, in turn, do not qualitatively change the field of human rights for the better, but regularly initiate and finance various conferences on the relevant topic, a logical conclusion suggests itself, that the constitutional guarantees of human rights depend both on the political will of the authorities and on the level of the economy of the state, while comparing its interests with external partners providing material assistance. In other words, the political will of the national level does not have sovereignty, independence and absolute power over the full effective implementation of constitutional guarantees of human rights. On the contrary, it depends on a group of subjective interests of the people’s delegates, while interacting with the economic capabilities of the state and the dictatorship of the capital of external partners.

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CZU 343.352
DOI https://doi.org/10.52388/2345-1971.2021.e1.04

CONSTITUTIONAL FRAMEWORK FOR THE DEVELOPMENT OF SELF-REGULATORY ORGANIZATIONS AS A WAY OF PROTECTION AGAINST CORRUPTION

Vasilii IGNATIEV
Doctor of Law, University Professor, Comrat State University,
Comrat, Republic of Moldova
e-mail: *ivasily_022@mail.ru*
https//orcid.org/0000-0002-9037-4422

The article reveals the reasons for the occurrence of various types of corruption and the classification of anti-corruption measures. The object of research is a complex of legal and non-legal relations that arise at the initial stages of the appearance of various forms and varieties of corruption. The purpose of this paper is to study the external and internal factors of the emergence of systemic corruption and to develop proactive methods for its weakening and disappearance at all levels of government and self-government. Ways are proposed to weaken corruption by developing self-regulatory organizations of entrepreneurs and delegating them to certain state functions. The relevance of the topic is due to the fact that corruption is a universal property of any state, a property that, potentially, under certain conditions of social life, can lead to the emergence of problems that call into question the very existence of the state. The author also believes that it is necessary to take concrete practical measures in the direction of changing imperfect legal norms in the form of stricter control over departmental regulation and conducting permanent expertise of "anti-corruption" legislation.

Keywords: *corruption, electoral corruption, constitutional uncertainty, abuse of public power, anti-corruption, self-regulatory organizations.*

CADRUL CONSTITUȚIONAL DE DEZVOLTARE AL ORGANIZAȚIILOR DE AUTOREGLEMENTARE CA MODALITATE DE PROTECȚIE CONTRA CORUPȚIEI

Articolul dezvăluie motivele apariției diferitelor tipuri de corupție și clasificarea măsurilor anticorupție. Obiectul cercetării este un complex de relații juridice și non-juridice care apar în etapele inițiale ale apariției diferitelor forme și varietăți de corupție. Scopul prezentei lucrări este de a studia factorii externi și interni ai apariției corupției sistemice și de a dezvolta metode proactive pentru slăbirea și dispariția acesteia la toate nivelurile de guvernare și autoguvernare. Sunt propuse modalități de slăbire a corupției prin dezvoltarea organizațiilor de autoreglementare a antreprenorilor și delegarea acestora anumitor funcții ale statului. Relevanța subiectului se datorează faptului că corupția este o proprietate universală a oricărui stat, o proprietate care, potențial, în anumite condiții ale vieții sociale, poate duce la apariția unor probleme care pun în pericol însăși existența statului. De asemenea, autorul susține opinia referitor la necesitatea de a se lua măsuri practice concrete în direcția modificării normelor juridice imperfecte sub forma unui control mai strict asupra reglementării departamentale și a efectuării expertizei permanente a legislației „anticorupție".

Cuvinte-cheie: *corupție, corupție electorală, incertitudine constituțională, abuz de putere publică, anticorupție, organizații de autoreglementare.*

CADRE CONSTITUTIONNEL POUR LE DÉVELOPPEMENT D'ORGANISATIONS D'AUTORÉGLEMENTATION COMME MOYEN DE PROTECTION CONTRE LA CORRUPTION

L'article révèle les raisons de l'apparition de divers types de corruption et la classification des mesures anticorruption. L'objet de la recherche est un complexe de relations juridiques et non juridiques qui se posent aux stades initiaux de l'émergence de diverses formes et variétés de corruption. Le but de cet article est d'étudier les facteurs externes et internes de l'émergence de la corruption systémique et de développer des méthodes proactives pour son affaiblissement et sa disparition à tous les niveaux de gouvernement et d'autonomie. Des moyens sont proposés pour affaiblir la corruption en développant des organisations d'autoréglementation des entrepreneurs et en les déléguant à certaines fonctions de l'État. La pertinence du sujet est due au fait que la corruption est une propriété universelle de tout État, une propriété qui, potentiellement, dans certaines conditions de la vie sociale, peut entraîner l'émergence de problèmes qui remettent en cause l'existence même de l'État. L'auteur estime également qu'il est nécessaire de prendre des mesures pratiques concrètes pour modifier les normes juridiques imparfaites sous la forme d'un contrôle plus strict de la réglementation départementale et d'une expertise permanente de la législation "anti-corruption".

Mots-clés: *corruption, corruption électorale, incertitude constitutionnelle, abus de pouvoir public, lutte contre la corruption, organisations d'autoréglementation.*

КОНСТИТУЦИОННЫЕ ОСНОВЫ РАЗВИТИЯ ОРГАНИЗАЦИЙ САМОРЕГУЛИРОВАНИЯ КАК СПОСОБ ЗАЩИТЫ ОТ КОРРУПЦИИ

В статье раскрываются причины появления различных видов коррупции и классификация мер по противодействию коррупции. Объект исследования – комплекс правовых и неправовых отношений, возникающих на начальных стадиях появления различных видов и разновидностей коррупции. Целью данной работы является исследование внешних и внутренних факторов появления системной коррупции и разработка упреждающих методов ее ослабления и исчезновения на всех уровнях государственного управления и самоуправления. Предлагаются пути ослабления коррупции за счет развития организаций саморегулирования предпринимателей и делегирования им некоторых функций государства. Актуальность темы обусловлена тем, что коррупция - универсальное свойство любого государства, свойство, которое потенциально, в определенных условиях социального бытия, может привести к появлению проблем, ставящих под сомнение само существование государства. Автор также придерживается мнения о необходимости реализации конкретных практических шагов в направлении борьбы с несовершенными нормами права в виде ужесточения контроля над ведомственным нормотворчеством и учреждения постоянно действующей экспертизы законодательства на «антикоррупционность».

Ключевые слова: *коррупция, электоральная коррупция, конституционная неопределённость, злоупотребление публичной властью, противодействие коррупции, организации саморегулирования.*

Introduction

The subject of this article is the development of organizational and legal measures to combat corruption through the creation of self-regulatory organizations in the communities of entrepreneurs in order to transfer some state functions to them (adoption of their charter, code of honor, arbitration court and industry rule-making). The object of the study is a complex of legal and non-legal relations that arise at the initial stages of the emergence of various types and varieties of corruption.

Purpose of the article. The main goal of the work is to study the external and internal factors of the emergence of systemic corruption and the development of proactive methods for its weakening and disappearance at all levels of government and self-government.

Research methods. In preparing the article, the following theoretical research methods were used: dialectical, system-structural, comparative legal, theoretical and prognostic.

Presentation of the main material

Constitutional legal science and corruption, according to many political scientists, are far apart, and only when corruption affects the entire mechanism of the state, when it takes state-forming forms, becoming part of the state system, that is, systemic corruption, only then constitutional law is obliged to assess the problem of corruption and show interest in previously uncharacteristic issues [1, p. 18].

However, as the experience of fighting corruption shows, even a well-developed system of preventive measures is sometimes not enough. Reforming the service sector, reducing the strength of officials' motives for entering into corrupt relations, and expanding the transparency of state activities should be recognized as the most obvious goals of the fight against corruption. The low level of salaries of officials, the closeness or even secrecy of funding are by no means the most essential conditions for corruption. There is a point of view that corruption is based not on ***constitutional norms, but on laws or other by-laws that contribute to its occurrence***.

However, in our opinion, corruption within the framework of constitutional law can be investigated earlier, since the state mechanism in democratic countries, first of all, is often affected by corruption through one of the main institutions of the constitutional law branch - suffrage and the electoral process.

When we talk about corruption, few of us think about electoral corruption, and it is through it that corruption penetrates the state system of all branches of government, affecting the entire state mechanism. Moreover, in the Republic of Moldova there is a multi-party system and some elected representatives of certain parties, after they are elected to the Parliament of the Republic of Moldova or local authorities, become "defectors" from one party to another for a certain monetary reward, etc.

Unfortunately, the Constitution of the Republic of Moldova, unlike the constitutions of other countries (Germany, France, the USA, etc.), bypasses the topic of elections as the quintessence of democratic governance and democracy, contains almost no norms of substantive law and does not give specific instructions in this regard, and such an important element of the political system, designed to satisfy the need of citizens to participate in the political life of the state and in government, as a political party, is completely absent in the constitution of the Republic of Moldova. It is this constitutional and legal uncertainty, in our opinion, that creates the primary, basic conditions for the emergence of corruption in Moldova.

The inevitability of corruption, its functional (along with dysfunctional) character, gives rise to the suspicion that it is rooted in the state apparatus. This suspicion finds its confirmation in the most general and most widespread definition of corruption. According to it, corruption is the abuse of public power for personal gain. Institutional roots of corruption - in relation to the agent-principal between the state and the official, on the one hand, which allows the official (agent) to abuse the use of the resources of the state (principal) in two forms: either directly in their own interests (for example, in the form

of embezzlement), or, on the other hand, for rent, in the interests of other individuals and their groups, for example, entrepreneurs (with the help of a bribe, etc.). In other words, as far as the essence of the state allows a conflict of interests between the state, an official and an entrepreneur, the high level of corruption exists.

Therefore, corruption should not be seen as merely a symptom of poor governance, as suggested by a number of authors. And since corruption is rooted in the very essence of the state, since it involves agency (in the civil law sense) relations, the goal of the fight against corruption is not to eradicate it, but to minimize it. This also implies the illusory nature of the success of the fight against corruption by the "strong hand" method (see below about this method and its inefficiency).

The widespread arbitrariness and corruption in the Republic of Moldova, which are tolerated and, in some cases, presumed by law, is evidenced by the fact that that even the Constitutional Court has repeatedly pointed out to the Moldovan legislator the need to take a more responsible approach to its main duty - law-making.

Anti-corruption measures can be divided into three broad groups. The first group consists of measures against external corruption (bribery of specific officials), with existing corruption, with specific corruption actors, and the second with institutional preconditions for corruption, with potential corruption, with the impersonal corrupter that can, under certain circumstances, become an official. The third group consists of organizational, legal and educational measures in business communities (unions, self-regulating organizations, etc.) with a view to transferring to them certain functions of the state (adoption of its statute, code of honour, arbitral tribunal and sectoral rulemaking). From this distinction, it is not difficult to see the following.

Firstly, the first group of measures will be punitive in nature, which is expressed in the tightening of state control.

Secondly, punitive measures will lead to a new round of corruption also for the following reasons. On the one hand, each of the measures aimed at reducing corruption is associated with the costs of obtaining information, catching corrupt officials, convicting them, and so on. The more corrupt officials, the greater the cost of their capture. On the other hand, the level of losses for a corrupt official is growing due to the application of rather severe penalties. In other words, corruption exists due to the fact that the profit of an official who brings the violator to justice is much lower than the punishment of the potential violator[2], the official's profit falls or remains unchanged, and the level of punishment of the potential corrupt official increases, which leads to an increase in corruption.

Thirdly, the fight against corruption within the framework of the first method, the purpose of which is the corrupt official him/herself, and not corruption, will be in the nature of the struggle of Hercules with the Hydra, which constantly grows new heads, which determines the cyclical nature of the eradication of corruption.

Fourthly, within the framework of this approach, "corruption among the state apparatus was fought exclusively by representatives of this apparatus. This led to two consequences: those who fought were organically unable to change the root causes that give rise to corruption, since they dated back to the most important conditions for the existence of the system; the fight against corrupt

officials often developed into a fight against competitors in the market of corrupt services" [2, p.465].

***Fifthly**, an encouraging opportunity to develop organizations for the self-regulation of entrepreneurs and the weakening of corruption or even its eradication, by delegating certain functions of the state to them* [3, c13].

The clearest idea of the first group of measures can be obtained by studying the history of the fight against corruption in China [4, Vol. 34]. Its beginning dates back to December 1951, when a program called "three anti-" (anti-corruption, anti-bureaucracy, anti-waste) began throughout China. Thousands of people were sentenced to death for engaging in corrupt relationships. Special people's courts were established to deal exclusively with cases of corruption. The government required everyone to report cases of corruption that became known to them. The campaign officially ended in June 1952. The results of the action seem astonishing. The number of reported cases of corruption fell from 500,000 in 1950 to an average of 290,000 between 1951 and 1965. Corruption at that time was so low that it allows G. Murdal to call China "a country of a disciplined state, which, by the standards of South Asia, is extremely honest" [5, p.232].

After the Cultural Revolution, which began in 1966, corruption again attracted everyone's attention. In 1982, the CCP Central Committee launched a new campaign against corruption. Its implementation was hampered by the fact that, compared with the previous period of exacerbation, shadow corruption increased sharply. This is primarily due to the fact that officials have developed "antibodies" in the campaign against corruption and formed stable coalitions, within which they "covered" each other. The state counteracted this by reorganizing the regulatory authorities and adopting special laws that supplement the criminal code and provide for more severe penalties for engaging in corrupt relations. The results of this campaign were much more modest. The main explanation for this is the assumption that officials, anticipating the visit of regulatory authorities, formed "offensive and defensive alliances." The Central Disciplinary Committee of the PRC began to face serious problems in identifying corrupt practices. This was due to the fact that high-ranking officials are involved in them, providing support to their subordinates. Sometimes a message about corrupt practices sent by one of the officials to the top was intercepted by his boss or a coalition of his corrupt colleagues. In other words, the first wave (cycle) of the fight against corruption led to the formation of corruption networks, that is, to a new qualitative level of corruption.

The explanation for the cycles is quite obvious - in China at that time they were fighting the symptoms of the problem, not the problem, the corrupt officials, not the sources of corruption.

The second group of measures is preventive, not punitive, directed against the causes, not external expressions of corruption, and therefore devoid of many of the shortcomings inherent in the "method of war". Measures of a preventive nature were collected by the staff of the World Bank into a single multi-purpose strategy for combating corruption. It consists of five sections:

1. Institutional Framework:

- institutionalization of an independent and effective judiciary;

- expanding the scope of parliamentary oversight;
- ensuring the independence of law enforcement agencies.

2. Political responsibility:

- political competition, credible political parties;
- transparency in the financing of parties;
- transparency of the voting procedure for voters;
- the duty of civil servants to declare property and the rules governing conflicts of interest.

3. Expanding opportunities for civil society participation:

- guaranteeing freedom of information;
- strengthening the role of the media.

4. Competitive private sector:

- restructuring of monopolies in order to increase competitiveness;
- reducing market entry barriers associated with the need to obtain various permits;
- transparency of corporate management;
- increasing the rights of business associations.

5. Public Sector Management:

- employment in the civil service on the basis of merit, decent remuneration of civil servants;
- decentralization of power;
- increasing the transparency of the budget process for regulatory authorities;
- increasing transparency in tax administration, depriving tax officials of the ability to arbitrarily grant tax incentives, simplifying tax administration.

Unfortunately, both in this work and in many other areas devoted to the fight against corruption, *the problem of the inadequacy of legislation* as a factor in the growth of corruption and, consequently, as a phenomenon, is almost completely obliterated, which must be taken into account in a strategy to counter it. With regard to legislation, in most cases the proposals are limited to the optimal design of laws against corruption, without taking into account that, in transitional times, the law against corruption itself may contribute to its emergence.

In our view, among other direct anti-corruption measures, there is a need for improved legislation, which should be implemented in the following areas:

– unraveling the contradictions and clarifying the ambiguities in the current legislation, since all this creates an opportunity for bureaucratic arbitrariness and corruption;

– “closing” of numerous reference norms in existing laws;

– revision of the scale of punishments for corrupt acts, taking into account the fact that often excessive punishments hinder the proof of crimes;

– differentiation in the Criminal Code of corrupt actions;

– revision of scales of duties, fines, etc. (fines that are too high are just as ineffective as those that are too low, as they encourage avoiding them with a bribe);

– development of organizations of self-regulation of entrepreneurs.

Constitutional provisions, due to their increased stability and rigidity, are not suitable for regulating market relations, including in the field of entrepreneurship. Their role is different - to guarantee the stability and predictability of business legislation based on Article 16 of the Charter of Fundamental Rights of the European Union, which is called “Freedom of entrepreneurial activity” and

which states that "Freedom of entrepreneurial activity is recognized in accordance with communitarian law and with national legislation and national practice" [5]. Taking into account the prospects for the accession of the Republic of Moldova to the EU, it would be advisable in Chapter II "Fundamental Rights and Freedoms" of the Constitution of the Republic of Moldova after Article 33, provide for Article 33* "Freedom of entrepreneurial activity and self-regulation" with the following content:

(1) The freedom of entrepreneurial activity is recognized and guaranteed within the framework of a market economy and is carried out in compliance with the law, including various forms of commerce, intermediation and small business.

(2) The state may intervene in the organization of economic, commercial, financial and labor life in order to ensure a balanced development of society within the framework of a market economy and to prevent illegal speculative transactions in order to establish fair social relations.

(3) Self-regulation is an independent form of association of entrepreneurs and business communities, in which a voluntarily created self-regulation organization independently sets goals, objectives, functions, powers, rights, obligations and a mechanism of mutual responsibility between small businesses within this organization and streamlines its relations with the state by submitting to the relevant body is an act of self-regulation (code of conduct, rule for resolving disputes in its own court), and the state authorizes it (agrees, legitimizes) and can delegate to it part of its powers to regulate the market in the relevant industry on a contract basis [6, c.10].

The most important change in the conceptual approach to entrepreneurship is the placement of Article 33* in Chapter 2 of the Constitution of the Republic of Moldova, dedicated to the rights and freedoms of man and citizen, as is the case, for example, in part 4 of Art. 26 of the Constitution of the Republic of Kazakhstan, in paragraph 1 of Art. 34 of the Constitution of the Russian Federation, art. 38 of the Constitution of the Kingdom of Spain on February 27, 1978, etc.

So, for example, Article 42 of the Constitution of Ukraine says "Everyone has the right to entrepreneurial activity not prohibited by law" [7].

Even in the principalities and kingdoms of the European Union, freedom of enterprise is guaranteed. So, according to Article 38 of the Constitution of the Kingdom of Spain on February 27, 1978 "recognizes the freedom of enterprise within the framework of a market economy." At the same time, "public authorities guarantee and protect its implementation in accordance with general economic requirements and ensure its productivity, and, if necessary, in accordance with planning requirements" [8]. Article 28 of the Constitution of the Principality of Andorra of March 14, 1993 also states that "free enterprise is recognized within the framework of a market economy and is carried out in compliance with the law" [8]. In Article 32 of the same Constitution states that "the state may intervene in the organization of economic, commercial, financial and labor life in order to ensure, within the framework of a market economy, the balanced development of society, as well as the general welfare."

A human rights and self-regulatory view of business suggests that the relationship between the state and business is a relationship

of equal partners and has reciprocal rights and responsibilities. At the same time, all forms of entrepreneurship, including small entrepreneurship, can be considered in the following ways:

Firstly, as a form of realization of the constitutional right to exercise freedom of entrepreneurship and types of economic activity not prohibited by law.

Secondly, as a form of realization of the right to work. It should be noted that small business creates the largest number of jobs.

Thirdly, as a kind of entrepreneurial activity and other small forms that are and are not subject to business legislation, but which must also have constitutional foundations and the right to their existence and development.

Fourthly, as an environment for the formation of self-regulation organizations. [9, p.72].

In addition, it is necessary to take concrete practical steps towards combating imperfect legal norms in the form of tightening control over departmental rule-making and establishing a permanent examination of legislation for "anti-corruption".

It should also be noted that measures to combat imperfections in the legislation that increase the likelihood of corruption have already been tested in practice in the Russian Federation.

Imperfections in the rules of law that increase the likelihood of corruption can be divided into the following groups:

1. For the implementation of the rule of law, the individual is forced to spend too many resources, which makes him/her want to pay for the failure to comply with this rule of law. This category includes substantive rules that either require too much from the subject of law, or procedural rules of law that allow the imposition of additional losses in the process of bringing to responsibility. As a factor that increases losses, one can also name the "crossing" of the control powers of law enforcement agencies. The number of checks sharply increases the losses for the economic agent, and thus provides the corrupt official with the opportunity to enter into contractual relations.

2. The rule of law gives the official the opportunity to choose between different options for behavior at his discretion.

3. There are no rules of law regulating the behavior of an official, thereby allowing him to behave at his own discretion. This case is closely related to the second group of corruption norms. The «line of demarcation» separates cases of well-intentioned discretionary power (e.g., relatively certain alternative sanctions in the administrative process) and errors in the rule-making process that allow gaps in law.

4. The norms of law give an official or department the right to develop and adopt normative acts. This category considers a special case of state capture. Simply put, appropriation of the state is the purchase of the process of rule-making (carried out by both the legislature and the executive) by interested parties. Administrative bodies are «captured» if they regulate public relations in the interests of narrow groups. The concept of "appropriation of the state" interests us insofar as the law provides for the possibility (sometimes formalizing it with numerous reference norms) of "purchasing" the process of departmental rule-making.

Each group will be discussed in more detail below.

Exaggerated requirements of the norm as a corruption factor

When analyzing the overstated requirements of the law, we will start from the following set of assumptions:

Assumption 1.

Any rule of law imposes on the individual certain losses (costs, encumbrances, restrictions) associated with the obedience to the rule of law.

Assumption 2.

The higher the losses that are associated with compliance with the rule of law, the more likely it is that the individual will pay for the opportunity not to comply with the rule of law or the reduction of losses.

Conclusion from assumptions 1 and 2:

Any law is *corruptogenic*, since it imposes on an individual or a community of individuals some losses associated with the obedience to the rule of law [10, p.53].

From the above assumptions, it is obvious that in order to analyze the corruption potential, it is necessary to understand the concept of a legal restriction that is imposed on an individual. Some researchers associate the concept of legal restrictions with the imperfection of the law. "We must remember that the norms themselves can have different content. Defenders of rules for the sake of rules sometimes assume that all rules are good rules. And indeed, if the rules are designed to discourage inappropriate and arbitrary behavior, they may be right. However, the rules may impose certain restrictions, for example, requiring the exclusion of a socially unprotected individual (an unemployed woman) from the lists for receiving social assistance due to the fact that she lives together with a man. Consequently, the rules may imply irrational legalistic behavior, in which the accuracy of the execution of the norm is in no way connected with the goals of the organization" [11].

Thus, the possibility of imposing certain legal restrictions is associated only with "bad" norms. It seems to us that this is a somewhat simplified picture of the imperfection of the norm. Based on the author's assumption, we can draw the following conclusion: any norm is "bad" in the sense that any norm imposes some kind of restriction on the individual, forcing him to spend his resources on complying with the norm (both outside a specific legal relationship, and through the creation, change, termination legal relationship). In accordance with the above assumptions, the imperfection of the norm will be that it imposes more burdens on the individual than it could. How to determine what size of a hardship, the norm imposes on the individual?

In this regard, it is necessary to elaborate on two possible misconceptions. The first law assumes that the absence of regulation, without imposing hardships on the individual, would be ideally non-corrupt. The issue of lack of regulation is primarily ideology. Perhaps it would have been relevant in the period of the dominance of the doctrine of the state - the "night watchman" and in the ideological discourse, the liberals of that time could also claim the advantage of their ideology, that it is inherently anti-corruption. But due to the blurring of ideological differences, both supporters of state regulation and supporters of laissez-faire allow regulation as such, but on different scales.

At the same time, it is impossible to deny the dependence of corruption on the ideological orientation of a particular law in all cases. For example, liberals "advocate the decriminalization of violations of moral standards,

especially those related to drugs and sex, provided that they are committed with mutual consent and concern only adults"[4]. Thus, most likely, they will vote for the fact that the criminal code does not provide for punishment for "violation of moral standards." At the same time, the last reservation provides another opportunity to make sure that the liberals, the supporters of *laissez faire*, do not completely abandon the regulation of social relations.

The second misconception concerns the possibility of some ideal, cost-effective and mathematically calculated level of legal constraints. However, the question of government regulation or lack thereof is a matter that is resolved within the framework of a representative body of power, rather than in the offices of economists behind a calculator and computer mathematics programs, i.e., a matter of value rather than technocratic.

Conclusion. By introducing self-regulatory and co-regulatory institutions and enshrining them in the Constitution of the Republic of Moldova, corruption will be significantly reduced.

Political determinants of corruption

1. The ideological position of the legislator and corruption

More or less *corruptogenic* regulation of certain social relations depends on the ideological orientations (value) of the deputies. Depending on their intentions (which, one way or another, are located on the continuum "strong - state control and regulation - weak state control, the predominant use of economic pressure measures to force the implementation of the rule of law"), they choose more or less *corruptogenic* ways of regulation. Comparing the latter, objectified in specific laws or bills, it is possible to determine which method of regulation generates the least (or the greatest) probability of concluding a corrupt deal. It should be noted, however, that in order to apply this method, it is necessary that a particular law or bill has something to compare with. In other words, at least two normative documents (irrespective of whether they have entered into force or not) should regulate similar social relations.

Conclusion. It is necessary to develop the ideology of self-regulation and to disseminate it among entrepreneurs, and the official to be trained to accept this new institution as an equal to state regulation. It will reduce corruption.

2. Political struggle and corruption

However, sometimes the adoption of a bill is determined not by the balance of the ideological positions of the deputies, but by the balance of the alignment of political forces. In this case, the bill is a means of fighting against a competitor in the political field. The law becomes an instrument of political struggle, forcing political opponents to spend inflated resources associated with obeying the rule of law. The liquidation of a party as a measure of responsibility for non-participation in elections for five years imposes more losses on the party compared to depriving it of state support, but maintaining its existence. The norms of the bills, which not only provide for the liquidation of a party as a measure of responsibility, but also give administrative bodies the right to file an application to the court for liquidation, should be recognized as the most *corruptogenic*.

3. Endogenous corruption

Some researchers believe that the factors that determine corruption are external to the

bureaucracy. Consequently, they deny the influence of bureaucrats on the level of overregulation (regulatory burden; the sociological analogue of excessive requirements of the rule of law) and thus defend the idea of the functionality of corruption. Their opponents believe that bureaucrats are able to deliberately increase the level of regulation in order to extract more rent. Endogenous corruption is facilitated by the modern constitutional legislation of most countries, which gives the executive power broad powers in the process of lawmaking. So, in France, the parliament can legislate only on a limited range of issues outlined in Article 34 of the Constitution of the French Republic. All other matters fall within the scope of the regulatory power vested in the government Article 44 of the same Constitution provides for a "blocked vote" procedure, according to which, at the request of the government, the chamber considering the bill must hold a unified vote on the entire text of the bill as a whole. At the same time, it has the right to retain only those amendments that were made by the government. The executive power also acquires broad powers in the field of lawmaking along with the pre-emptive right to form the agenda of both the Senate and the National Assembly.

In some transitional countries, the constitutional legislator gives the executive even more legislative power. Thus, according to the Constitution of the Republic of Kazakhstan, there are three state bodies, the Parliament, the President and the Government, which are empowered to issue laws (the President of the Republic issues decrees with the force of law and decrees with the force of constitutional law).

4. Features of bureaucratic law enforcement

The bureaucratic organization is far from being as ideal for managing modern society as it seemed to M. Weber. It has a number of shortcomings identified by sociologists and economists. One of the drawbacks is that bureaucrats are overly committed to rules, which become an end in themselves. Bureaucrats do not see *the spirit of the law* behind the specific norms of the law. We find an explanation for this phenomenon in Merton. "An effective bureaucracy," he writes, "requires reliable response and strict adherence to rules. Such adherence to rules leads to their transformation into an absolute, they are no longer considered as a means to achieve a certain goal" [12]. W. Thompson, calling such phenomena "bureaupathology", connects their occurrence with organizational specialization, within which the manager needs to control his subordinates. The emphasis on the formal requirements of the norm, and not on its substantive aspects, makes bureaucratic law enforcement formalistic and rigid. Those obligations imposed on the individual, which were laid down by the legislator, at best are not overlooked, and at worst, they increase in the process of law enforcement.

5. Additional losses in the process of applying the rule of law

The requirements of the rules of law may be exaggerated in the process of law enforcement: either due to the imperfection of the procedural rules in accordance with which the activities of the law enforcement officer should be carried out, or due to the imperfections of those substantive rules that establish the legal status of law enforcement instances,

allowing for the "crossing" of the control powers of various bodies.

In the first case, the procedural rule of law allows the imposition of additional burdens on an individual who is already obliged, by law, to bear certain burdens.

It should be noted, however, that very often the department independently assigns control powers to itself. The abundance of controlling authorities in a rather narrow area of supervision makes it completely impossible to differentiate control powers between them and, thereby, creates a duplication of powers.

6. Corruption of the branch of legislation

Exaggerated requirements of the rule of law may stem from the very organization of the legal field. In other words, sometimes it is not a rule of law that is corruptible, but a branch of legislation as a set of normative acts of various legal force that regulate a relatively independent area, the sphere of public relations. The most characteristic example in this case is the branch of legislation on administrative responsibility. Norms of administrative law can be contained in any law and even in a by-law. As a result of this provision, administrative responsibility is currently established by a huge number of laws and regulations. This forced some authors to talk about "erosion of the unified legal field of administrative offenses" [13, p.44].

Conclusions

Thus, based on our study, we can formulate the following conclusions and suggestions:

1. It is necessary to change the electoral law and the electoral process, because through electoral corruption, corruption penetrates the state system of all branches of power, affecting the entire state mechanism. The new Constitution requires a norm prohibiting the elected representatives of certain parties after they are elected to the Parliament of the Republic of Moldova or local authorities from switching from one party to another, up to criminal liability.

2. Entrepreneurs' self-regulatory organizations should be developed and corruption should be reduced or even eradicated by delegating some state functions to them. In the new Constitution of the Republic of Moldova, provide for Article 33 * «Freedom of entrepreneurial activity and self-regulation» (example wording of this article, see above). Adopt the Law of the Republic of Moldova "On Self-Regulatory Organizations".

3. In addition to the introduction of self-regulation institutions, it will be possible to develop joint regulation between the state and self-regulatory organizations, that is, co-regulation, which will also significantly reduce corruption.

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10. Ниже вместо понятия «несовершенство норм права, повышающих вероятность коррупции» будет использован термин «коррупциогенный фактор», предложенный С. В. Максимовым. Автор определяет его как «явление или группа явлений (факторный комплекс), порождающих или способствующих порождению или росту коррупции». См. Максимов С.В.. Коррупция. Закон. Ответственность. М., 2000. С. 53.

11. К этому же выводу пришел и Макмиллан, отмечавший, что, «раз все законы ставят некоторую группу людей в невыгодное положение (put some group at a disadvantage), эта группа становится потенциальным источником коррупции». (См.: McMullan A theory of corruption // The sociological review, Vol. 9 1961, p. 196)

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CZU 346.7:339.727.22
DOI https://doi.org/10.52388/2345-1971.2021.1.06

ON REGULATION OF CRYPTOCURRENCY: THE INTERNATIONAL EXPERIENCE[1]

Evgheni FLOREA
Doctor of Law, Associate Professor,
Comrat State University, Comrat, Republic of Moldova,
Head of Compliance Department, Quan2um OU cryptoexchange platform, Tallinn, Estonia
e-mail: *florya@yahoo.com*
https://orcid.org/0000-0001-7236-0695

Elena S. PUSTELNIK
Master of Laws, Emory University School of Law, United States of America,
Paralegal, Privacy Compliance GDPR, Cybersecurity at Workplace
e-mail: *espustelnik@gmail.com*
https://orcid.org/0000-0002-0034-0879

The study is dedicated to various jurisdictions' approaches to cryptocurrency relations regulation. The digital assets'legal status in the European Union is analyzed both at the central level as well at the level of such EU members as Malta, Romania, Germany. Among the countries that geographically belong to Europe, but are not members of the European Union, Switzerland and the United Kingdom are considered in this aspect. The authors also reviewed the most important issues of cryptocurrency regulation in the largest economy in the world - the United States. The Asian region is represented in the study by the jurisdictions where digital assets are most widespread (China and Japan). The main conclusion is that the Republic of Moldova should develop the balanced approach for legalizing the new sphere of socio-economic relations by taking into consideration both positive and negative experience as well as the best legal practices of other states in this field.

Keywords: *cryptocurrency, digital assets, blockchain, regulation, Bitcoin, EU Fifth AMLD Directive, cryptocurrency exchanges.*

DESPRE REGLEMENTAREA JURIDICĂ A CRIPTOMONEDEI: EXPERIENȚA INTERNAȚIONALĂ

Prezentul studiu examinează abordările diferitor jurisdicții cu privire la reglementarea legală a relațiilor criptovalutare. Statutul juridic al activelor digitale în legislația Uniunii Europene este analizat atât la nivel central, cât și la nivelul unor state-membre UE precum Malta, România, Germania. Printre țările care aparțin geografic Europei, dar nu sunt membre ale Uniunii Europene, Elveția și Regatul Unit sunt analizate în acest aspect. Autorii, de asemenea, s-au axat pe problemele actuale ale reglementării criptomonedelor în cea mai mare economie din lume - Statele Unite ale Americii. Regiunea asiatică este reprezentată în studiu de țările în care activele digitale sunt cele mai răspândite (China și Japonia). Principala concluzie a autorilor este că pentru a dezvolta în Republica Moldova o abordare echilibrată a noii sfere de relații socio-economice criptovalutare este nevoie de a lua în considerențe experiența legislativă a altor state (atât pozitivă, cât și negativă), precum și cele mai bune practici juridice de peste hotare.

Cuvinte-cheie: *criptovalută, active digitale, blockchain, reglementări juridice, Bitcoin, a cincea directivă a UE, schimb criptovalutar.*

[1] We would like to thank Antonia GORSHENIN for editing this article.

SUR LA RÉGLEMENTATION JURIDIQUE DE LA CRYPTOCURRENCE: EXPÉRIENCE INTERNATIONALE

L'étude examine les approches de diverses juridictions en matière de réglementation juridique des relations de crypto-monnaie. Le statut juridique des actifs numériques dans la législation de l'Union européenne est analysé à la fois au niveau central et au niveau d'états membres de l'UE tels que Malte, la Roumanie et l'Allemagne. Parmi les pays qui appartiennent géographiquement à l'Europe, mais qui ne sont pas membres de l'Union européenne, la Suisse et le Royaume-Uni sont considérés sous cet aspect. Les auteur se sont également penché sur les questions d'actualité de la réglementation des crypto-monnaies dans la plus grande économie du monde - les États-Unis. La région asiatique est représentée dans l'étude par les états où les actifs numériques sont les plus répandus (Chine et Japon). La principale conclusion est que, du point de vue de l'expérience d'autres états (à la fois positive et négative), après avoir examiné les meilleures pratiques juridiques, il faut développer en République de Moldavie l'approche la plus équilibrée pour légaliser la nouvelle sphère de relations socio-économiques.

Mots-clés: *crypto-monnaie, actifs numériques, blockchain, réglementation légale, Bitcoin, cinquième directive de l'UE, échanges de crypto-monnaie.*

О ПРАВОВОМ РЕГУЛИРОВАНИИ КРИПТОВАЛЮТ: МЕЖДУНАРОДНЫЙ ОПЫТ

В данном исследовании рассматриваются подходы различных юрисдикций к правовому регулированию криптовалютных отношений. Анализируется правовой статус цифровых активов в законодательстве Евросоюза как на центральном уровне, так и на уровне таких государств ЕС как Мальта, Румыния, Германия. Среди стран, которые географически относятся к Европе, но не являются членами Евросоюза, в данном аспекте рассматриваются Швейцария и Великобритания. Также авторы рассматривают актуальные проблемы регулирования криптовалют в крупнейшей экономике мира – США. Азиатский регион представлен в исследовании государствами, где цифровые активы получили наибольшее распространение (Китай и Япония). Главный вывод авторов состоит в том, чтобы с позиций имеющегося у других государств законодательного опыта (как позитивного, так и негативного), выработать в Республике Молдова максимально взвешенный подход к легализации новой сферы социально-экономических отношений.

Ключевые слова: *криптовалюта, цифровые активы, блокчейн, правовое регулирование, Биткоин, Пятая Директива ЕС, криптовалютная биржа.*

Introduction

The new social relations arising from the emergence of digital assets have caused a need for the development of an appropriate legal regulatory mechanism. Different countries, depending on the degree of acceptance of the new technology and established legal traditions, have approached this issue differently. Our study is dedicated legal framework of cryptocurrency regulation in such jurisdictions as European Union, Malta, Estonia, Romania, Germany, The United Kingdom, Switzerland, The United States of America, People's Republic of China and Japan. Since the Republic of Moldova has not adopted yet any laws or regulations in this field, foreign legislative experience can provide a valuable experience for the future Moldovan law on cryptocurrency.

European Union

Cryptocurrency regulation in the European Union are in their formative stages. The European Union authorities are quite wary of the new sphere. Indicative in this sense is the reaction to Libra, Facebook's digital currency, which the company intended to launch in the European Union. The alliance's finance ministers decided not to allow Libra or any other stablecoin to be used in the European Union. The ministers said in a joint statement that "no agreement to launch stablecoins will go into ef-

fect until legal and regulatory risks have been identified and addressed" [1]. Meanwhile, work is already underway at the European Commission to develop specific rules to regulate crypto assets and stablecoins [1].

Currently, the European Court of Human Rights has only one precedent related to cryptocurrency. In *Skatteverket vs David Hedqvist* [2]. Court ruled that:

1) Bitcoin is a currency, not a commodity,

2) Bitcoin exchange transactions for fiat currencies are exempt from VAT.

The Fifth Anti-Money Laundering Directive (5AMLD) has to be mentioned within EU regulatory framework [3]. This Directive is currently the main document of the European Union in the field of cryptocurrency regulation.

It should be noted that EU Directives and Regulations have different normative properties. Whereas the EU Regulation is a normative act of direct action, which does not require mediation by national law. The Directive, as a normative act, is indirect. This means that the competent authorities of the European Union have established a certain timeframe for the Member States to implement the Directive into national law, while the national authorities are free to choose the means and ways to achieve the goal [4, pp. 45-46]. As such, the Member States were required to implement the Directive norms by January 10, 2020. The governing, supervisory and coordinating body for the Directive implementation is The European Banking Authority (EBA) [5].

In addition to the official definition of virtual currencies, the Fifth Directive also contains certain requirements for Member States to regulate this area:

- Empowering national financial monitoring units to obtain the addresses and identification of digital currencies owners.

- cryptocurrency exchanges and wallets are required to register with the competent authorities at their location.

- the obligation of platforms providing cryptocurrency services to submit suspicious activity reports (SARs) and perform customer due diligence (CDD).

Countries in the European Union are implementing both, digital technologies and 5AMLD at various speeds. Among the jurisdictions, which are the most active in this area, Malta and Estonia are taking the lead.

Malta

The country is often referred to as a "blockchain island" for the activity that local authorities are doing in attracting investments in this area. Blockchain and cryptocurrencies are not merely legalized here. A holistic regulatory framework provides an extremely favorable climate for foreign investors to operate in the blockchain technology sector.

On July 4, 2018, the Parliament of Malta passed the following laws [6]:

- Digital Innovation Authority Act;
- Innovative Technology Arrangements and Services Act;
- The Virtual Financial Assets Act.

The last document is the most important for the industry. It covers the operations of traders, brokerages, exchanges and asset managers in Malta. The attractiveness of the "blockchain island" for cryptocurrency investments is eloquently demonstrated by the fact that Binance, the world's largest cryptocurrency exchange by volume, has moved its head office from Hong Kong to Malta [7].

Such rapid implementation of digital technology on the island has a downside. In January 2019, the International Monetary Fund (IMF) concluded that the growth of the blockchain sector in Malta "has created significant money laundering and terrorist financing risks in the island's economy" [8].

Estonia

According to the Doing Crypto Index, which included 23 countries where blockchain technology is most prominent, Estonia ranked

first in terms of cryptocurrency friendliness [9]. And this should come as no surprise. The country that gave Skype to the world, actively supports the IT business, and in general strives to meet the needs and demands of the time in the field of digital technology. The former Soviet republic primarily attracts businesses from the former Soviet Union. Four main factors contribute to this:

- e-residency law, which allows foreign nationals to register a business in the country remotely and interact online with governmental agencies from anywhere in the world. No paperwork is required. All documents, including licenses, are issued solely electronically. The embodied concept of the "remote state" had the best effect on the investment climate. For a while after the law was passed, the weekly number of applications for online residency has exceeded the weekly birth rate in the country [10].

- country is the only non-offshore jurisdiction with zero percent income tax for entrepreneurs. A company doing business here only has to pay tax on undistributed profits, or profits that are distributed outside of Estonia. In other words, until the moment when a company decides to distribute profits outside Estonia, it is completely exempt from paying income tax.

- country's membership in the EU allows business projects registered here to legally carry out their economic activities throughout the European Union without physical presence in this territory.

- friendly attitude of the regulators, even if an investor speaks neither Estonian nor English. Even if you speak just Russian, you can always call and get a detailed answer to any question related to any aspect of doing business in the country.

These aspects do not mean that business activities are performed out here without proper control. Business representatives note, that at the moment, Estonian legislation regarding crypto-business is the strictest of the non-binding, i.e. regulating the crypto-industry, rather than prohibiting it, in the world [10].

Estonia was the first in the EU to implement the provisions of 5AMLD. It did not adopt a separate normative act to regulate the crypto environment. The necessary norms were incorporated into the law "On Combating Money Laundering and Terrorist Financing" adopted on October 26, 2017 [11]. This document provided a legally regulated framework for businesses related to virtual currencies.

The new law has appointed the Financial Intelligence Service as supervisory authority for virtual currency service providers which is a division of the Estonian Police and Border Guard Control (Article 69, part 3). In addition, voluminous Section 8 of the above law, called "Authorization and Prohibition to Provide Services" is dedicated to the requirements for conducting activities related to virtual currencies. The detailed rules of Section 8, provide clarity and allow all licensed individuals to legally trade, exchange, and invest in cryptocurrencies.

It should be noted that since July 1, 2020, the specialized legislation for crypto-businesses in the country has become noticeably stricter. These measures resulted from the scandal at the Estonian branch of the largest Danish commercial bank Danske Bank, which was involved in the laundering of $220 billion [12]. This scandal was the largest of its kind in the history of the EU and strongly affected Estonia's reputation. It is obvious that the main culprit should be the Danish regulator that ignored six warning letters from the Estonian Financial Intelligence Service and did not take appropriate measures to stop the illegal activities [13].

To the credit of the Estonian authorities, their response was very swift and harsh, directly affecting the cryptocurrency business, which is associated with increased money laundering risks. In 2020, more than 1,000 cryptocurrency

companies lost their licenses and fewer than 400 firms continue to operate [14].

The legislative changes boiled down to the following:

- all cryptocurrency businesses are equated with financial services in terms of anti-money laundering and counter-terrorist financing regulation;
- a firm offering services in the cryptocurrency sphere must be located and operated in Estonia;
- top managers and founders of crypto-projects, who wish to obtain an Estonian license, must provide a complete set of documents, confirming the absence of the criminal record, relevant experience and the necessary education;
- company employees must be physically located in Estonia. Having a virtual office or rented premises for nominal address registration is no longer sufficient;
- a single virtual currency service provider license will replace the two previously existing licenses for providing virtual currency wallet services and for providing virtual currency exchange services;
- documents required to apply for a license must be submitted through a notary public or electronically through the Registry of Enterprises;
- state fee for the license increases from 345 to 3,300 Euros (10 times). The pending status of an application can be extended up to 120 days (previously the maximum period was 60 days);
- company must have a payment account in a credit institution, electronic money institution or payment institution on Estonian territory or another state of the European Economic Area;
- minimum authorized capital according to the new regulations is 12 thousand euros and must be paid in full;
- individuals who transfer cryptocurrencies in excess of 15 thousand euros per month and legal entities with monthly cryptocurrency transactions exceeding 25 thousand euros may at any time be required to provide documents proving the origin of funds;
- company applicant, while documents for the license are under review, must assure, through the Estonian Finance Department, that the application complies with the new legal norms [15].

Romania

The state is a part the European Union countries whose authorities have not shown any particular interest in cryptocurrencies and blockchain technology. This is eloquently demonstrated by the fact that the country is on the list of alliance members that have not fulfilled their obligations to implement 5AMLD into national legislation [16]. In this connection, the European's Commission decision has demonstrated its position stating that "the Commission regrets that the respective member states failed to transpose the directive in a timely manner and calls on them to do so forthwith, given the importance of these rules for the collective interests of the EU... All member states should have implemented the rules of the 5th Anti-Money Laundering Directive by January 10, 2020... Legislative gaps arising in one Member State have an impact on the EU as a whole" [16]. In addition to Romania, the list of countries that did not meet the deadline also included ***Cyprus, Hungary, the Netherlands, Portugal, Slovakia, Slovenia and Spain*** [16].

Recognizing the fact that the implementation was late, the Romanian government urgently adopted a package of regulatory amendments through which the country's legislation was brought into compliance with 5AMLD. The amendments were made to Law No. 129/2019 on preventing and combating money laundering and terrorist financing, Law No. 15/2006 on credit institutions and capital adequacy, Code of Tax Procedure No. 207/2015 and several other acts [17].

The National Bank of Romania issued two press releases outlining its position regarding "virtual currencies" [18]. The first press release notes that "virtual currency" should be distinguished from national and foreign currency, as well as from electronic money. With reference to the report of the European Central Bank and the communication of the European Banking Authority, the Romanian regulator lists the risks associated with the use of "virtual currencies":

- lack of regulation and supervision;
- risks associated with money laundering and terrorist financing;
- risks of volatility;
- risks of inadequate security.

In the second press release, issued three years after the first one, the Romanian National Bank reiterated its position, describing "virtual coins" as "speculative, extremely volatile and risky assets". Therefore, credit institutions, in order to avoid reputational risks, are "not recommended" to take part in any transactions involving virtual currencies, including in terms of providing investment or trading services.

As a consequence, Romanian commercial banks rushed to close customer accounts of two local crypto platforms, CryptoCoin Pro and BTCxChange. The first platform, with more than 7,500 clients, was forced to change its jurisdiction to Luxembourg [19].

It should also be mentioned that in March 2018, the National Agency for Fiscal Administration (ANAF) stated that cryptocurrency transactions are taxable [20].

Germany

The Federal Republic of Germany ranks 33rd in the world in the adoption of cryptocurrencies [21] and ninth in the Global Innovation Index 2020 [22]. Nevertheless, the EU's largest economy is often looked back on by other members of the alliance, so the position of German authorities regarding cryptocurrencies seems particularly important.

The country was one of the first to define the legal status of digital assets. Back in 2011, the German regulator, the Federal Financial Supervisory Authority (BaFin), classified cryptocurrencies according to Art. 1 of the German Banking Act (Kreditwesengesetz) as financial instruments. They fall into a subcategory of so-called "units of account" (Rechnungseinheiten), which is a special category of financial instruments not based on the EU law [23].

In terms of taxation, German law is not as strict as the US tax law, where Bitcoin is recognized as property and is taxed on capital outflows. According to the regulation of the German Ministry of Finance, Bitcoin has been equated to means of payment, so the purchase of goods or payment for services with digital money is only subject to VAT [24].

Beginning in January 2020, German banks were allowed to store and conduct transactions with Bitcoin and other cryptocurrencies [25]. The new law stipulates that online banking services, which include transactions with stocks, bonds and cryptocurrencies, will only be available to German financial institutions that receive the appropriate license issued by BaFin. The demand for legal certainty in this area can be demonstrated by the fact that almost immediately after the adoption of this law, more than 40 banks expressed interest in obtaining a license for cryptocurrency services [26].

The United Kingdom

The country openly supports companies operating in the field of digital currencies, which often choose it because of the availability of all necessary infrastructure for comfortably conducting business, as well as a well-developed banking and financial sector. Nevertheless, the legal framework for cryptocurrency activity has not yet been developed. In terms of their legal nature, cryptocurrencies are considered (UK) "private money" in the United Kingdom [27, p. 2].

The issue of ICO also remains unregulated, although most of the tokens are subject to the

existing legal framework of the country. It is important to note that Brexit has had little or no effect on the United Kingdom's position on 5AMLD. The country, albeit with a slight delay, still implemented the directive into national law by amending its 2019 Regulation [28].

The Financial Conduct Authority (FCA) and the Bank of England are responsible for the regulation of financial services in the UK. The FCA's functions include promoting effective competition in the interests of consumers, strengthening and protecting the integrity of the country's financial services sector, and protecting consumers from potential harm. On the other hand, the Bank of England works to reduce or eliminate risks that could pose a threat to the country's financial stability.

In the absence of a clear legal framework for the crypto business, British regulators have been very constructive. The FCA created a program called Innovation Hub [29]. Cryptocurrency companies participating in it can receive advice on the legal regulation of their current or future activities. In this regard, companies can test their business model for compliance with current UK legislation before launching their business. This is certainly a good initiative that allows potential investors to understand the possible legal risks associated with digital technologies without the threat of any repressive action from the regulator.

An important document that sheds light on a number of legal issues that may arise for cryptocurrency businesses is the Crypto Asset Guidelines published by the Office [30]. In the Guide, among other issues, the FCA outlines the limits of legal regulation depending on the type of crypto assets, which fall into three categories:

- Exchange tokens, which are not issued and maintained by any central authority and are intended to be used as a medium of exchange. They are usually a decentralized tool for buying and selling goods and services without traditional intermediaries such as central or commercial banks. Cryptocurrencies such as BTC, ETH, LTC, etc. should fall into this category. These crypto-assets are usually outside the "perimeter" of competence;
- Security tokens. They are tokens with specific characteristics granting rights and obligations akin to investments such as stocks or debt instruments, as stated in the Financial Services and Markets Act [31]. These tokens are inside the "perimeter" of regulation;
- Utility tokens provide the right to receive services or goods within a platform, but not of the same nature as investments. Under certain conditions, these tokens can fall under the category of electronic money, and thus be in the "perimeter" of regulation.

In general, the UK follows the path of industry regulation similar to traditional financial services.

Switzerland

As a global financial center, the country is reluctant to join the EU on its own initiative to avoid collective pressure on its banking system. Traditional finance is not Switzerland's only strength. According to the Global Innovation Index 2020, for the second year in a row, the country ranks first in the world in terms of innovation development, ahead of Sweden, the US and the UK [22].

Overall, this jurisdiction is not just blockchain-friendly, but is taking the lead in the global adoption of digital assets and distributed ledger technology. Large companies choose this country for their operations because of the stability and predictability of legal regulation, as well as of investors' rights protection. The development team of Etherium, the second most capitalized cryptocurrency, chose Switzerland to register its Ethereum Foundation platform [32]. Libra, a cryptocurrency-based payment system for Facebook users, is also registered here.

In January 2017, the city of Zug organized the independent government-backed Crypto

Valley Association to promote blockchain-related technologies [33].

The regulator for the crypto market is the Swiss Financial Market Supervisory Authority (FINMA), which reviews each ICO registration case individually. FINMA has also issued Guidelines for companies interested in conducting ICO in the country, putting the main emphasis on anti-money laundering and securities regulation [34]. In a risk monitoring report, the Swiss regulator directly linked blockchain and cryptocurrencies to the increased money laundering risks through the country, which could threaten its reputation as a financial center. FINMA recognizes that new technologies have great potential to improve financial market efficiency. However, the higher speed, anonymity and global nature of such financial instruments make them attractive for illicit purposes [35]. Nevertheless, in August 2019, the agency first issued licenses to two cryptocurrency banks, SEBA Crypto and Sygnum, while also publishing fairly strict regulatory guidelines for blockchain payment services [36]. But not all companies meet the requirements. For example, the regulator ruled the $90 million ICO from crypto-mining company Envion illegal, launching an investigation for financial market violations [37]. In connection with the case, FINMA said it would continue to take action against illegal ICOs that "violate or circumvent the supervisory law" [37].

In early 2020, the Swiss Ministry of Finance began discussing a regulation that would implement a legal framework to regulate blockchain and the crypto industry at the state level in August 2021 [38]. While the process has not yet been completed, most cryptocurrency activity is subject to general financial market regulations. Earlier, the Swiss government refused to create a separate legal framework to regulate blockchain and crypto industry. The authorities decided to amend just some laws that regulate different areas ranging from bankruptcy of companies to securities trading [39].

The United States of America

The country ranks first in the world by the number of CryptoATM, which indicates the high prevalence of digital assets among the population[2]. Overall, it is a very heterogeneous jurisdiction for cryptocurrency business. It is duly noted that the U.S. market is a dream and at the same time a nightmare of any crypto-project [41]. This is due to the legal specifics of the largest global economy, where each state has its own legislation, and there are many committees, commissions, departments and agencies at the federal level, whose competence in terms of crypto industry is not yet been clearly enough defined.

The year 2013 turned out to be especially important for the cryptocurrency business in the country.

In November, the U.S. Senate (Committee on Homeland Security and Governmental Affairs) held a hearing on virtual currencies, calling them "digital cash". As a result of the hearing it was ruled not to ban the circulation of cryptocurrencies, but to work on the regulation of this sphere of activity [42].

Earlier in March of the same year, the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) announced that cryptocurrency to fiat money exchange operations should be regulated in the same way as traditional money exchange operations (for example, dollars to euros or vice versa). Companies providing such exchange services must register as financial service providers (Money Service Business) and report suspicious transactions (Suspicious Transaction Report) [43].

The U.S. court system has set an important legal precedent regarding crypto assets. In Au-

[2] A crypto machine is similar to an ATM, a machine for transferring cash into cryptocurrency. According to CoinATMRadar, as of January 2021, there were 1,125 cryptoATMs installed in the U.S., more than ten times the number in second place Canada (1,144) [40].

gust 2013, the U.S. Court for the Eastern District of Texas in *SEC vs. Trendon T. Shavers and Bitcoin Savings and Trust*, issued a decision that effectively equated the first cryptocurrency with money. The plaintiff alleged that the defendant committed fraud by fraudulently misappropriating 263,104 in Bitcoin. According to the defendant, Bitcoin is not money, so the charge has no legal basis. In the ruling on the case, Judge Amos L. Mazzant specifically stated, ". Bitcoin can be used as money. It can be used to buy goods or services and to pay for individual living expenses. The only limitation of Bitcoin is that it is limited to those places that accept it as currency. However, it can also be exchanged for conventional currencies such as the U.S. dollar, euro, yen and yuan. Thus, Bitcoin is a currency or form of money..." [44].

The toughest stance on cryptocurrencies has been taken by the government's Securities and Exchange Commission (SEC). This primarily applies to ICOs - initial coin offerings to attract investors to fund a project. Considering cryptocurrency as securities, the agency has not yet proposed clear and understandable rules of the game for the crypto-business, which creates legal uncertainty in the market and significantly complicates the work of companies operating in this area. A number of actions of the American regulator prompted the crypto-business to be very cautious about the choice of the USA as a potential jurisdiction for ICO. In particular, the SEC banned Pavel Durov's TON cryptocurrency platform GRAM two weeks before its official launch [45]. On the same grounds, the agency sued Ripple, whose currency XRP makes top 10 by market capitalization [46]. Earlier, SEC fined another major player in the crypto industry, Block.one, developer of the EOSIO blockchain and EOS cryptocurrency, due to having unregistered ICOs, for $24 million [47].

Clarity in the regulation of crypto-business may be increased by a bill sent to Congress, informally called the "Cryptocurrency Act." This document identifies three types of cryptocurrencies, each of which will have its own financial regulator:

- commodity, regulated by the Commodity Futures Trading Commission (CTFC);
- crypto-currency, regulated by Financial Crimes Enforcement Network (FinCEN);
- crypto-security, regulated by the Securities and Exchange Commission (SEC) [48].

The crypto-community also has certain hopes with the new U.S. President Joe Biden, whose team includes specialists with a deep knowledge of blockchain technology and capable of pursuing a friendlier policy towards the crypto-industry. In part, these hopes are already beginning to be realized. In particular, the new President has decided to freeze the implementation of some of his predecessor Donald Trump's decrees [49]. This also affected the proposal to collect personal information about the contracting parties and transactions of cryptocurrency firms' clients, which were supposed to be carried out by FinCEN. Many crypto-business representatives took this initiative of the previous President extremely negatively, considering it "ruinous" for the field of digital currencies [50].

China

The Asian cryptocurrency market is the largest in the world. According to crypto-analytical firm Chainalysis, 31% of all cryptocurrency transactions in 2020 (which is $107 billion) were conducted in East Asia, 77% more than in the second largest region (Western and Northern Europe) [51]. China alone is home to 65% of the world's Bitcoin mining capacity [52].

Until 2017, the country could be considered a world leader in cryptocurrency transactions. The largest exchanges of digital assets with a multimillion-dollar daily turnover were operating here. The world's second economy accounted for up to 90% of all Bitcoin trading for some period of time [53].

China's dominance in this market did not last long, however, a series of governmental decisions were made that severely impacted the crypto industry in the country.

Originally six central governmental regulators – the People's Bank of China (PBOC), China Cyber Administration, Ministry of Industry and Information Technology, State Administration of Industry and Commerce, Banking Regulatory Commission and Securities Regulatory Commission - issued a joint Announcement on Prevention of Financial Risks Associated with Initial Token Offerings [54]. According to the document, virtual coin offerings were deemed unlicensed investment solicitation. Thus, the Chinese government effectively banned ICOs in the country.

Further, in the same month, the Financial Risk Control Committee of the PBOC obliged all cryptocurrency exchanges registered in Beijing to completely stop trading and registering new users [55]. Thus, the activities of cryptocurrency exchanges in China were forcibly suspended. Companies providing cryptocurrency exchange services were forced to change their jurisdiction to other, more loyal markets.

According to RosBiznesConsulting (RBC Group), as a result of the measures taken, in less than a month Bitcoin trading in yuan has fallen in the country to less than 1% of global turnover, and the daily trading volume has dropped from a peak of nearly 120,000 Bitcoins to less than one hundred [53].

In January 2018, Chinese government banned over-the-counter cryptocurrency markets as well as buying and selling of crypto assets by individuals [56]. In February, authorities blocked internet access within the country to foreign crypto exchanges and ICO sites [56].

In fact, cryptocurrency trading is now banned in the country, but storage of digital assets is still allowed. At the same time, Chinese government, while limiting the circulation of cryptocurrencies as much as possible, is taking an active interest in the blockchain technology itself. National cryptocurrency, digital yuan, [57] which will have a physical and virtual form, is being tested in major cities across the country. It will be issued by the PBOC.

On January 1, 2020, the country's Cryptography Law came into force [58]. It does not talk directly about cryptocurrencies, but creates a regulatory framework for cryptography and password management standards. According to the document, the Central Cryptographic Agency is in charge of public cryptographic work and the development of regulatory principles for the industry.

In fact, the law is another step for China to create its own centralized digital currency. At the same time, there is almost no legal basis for the existence of other cryptocurrencies.

Japan

Support for innovative technology has always been a strength of the Japanese economy. Such transnational corporations as Sony, Panasonic, Toshiba, Hitachi are known worldwide. Therefore, it makes sense that blockchain technology and cryptocurrencies, which are unthinkable without mobile devices, found fertile ground in this country.

The impetus for the development of regulatory rules for crypto-business was the hacking of Tokyo-based crypto exchange Mt.Gox. By 2013, the site was processing more than 70% of all Bitcoin transactions worldwide. The hack resulted in the loss of 744,408 BTC belonging to the exchange's customers, as well as about 100,000 of the exchange's own coins, totaling $480 million (at 2014 exchange rates) [59]. Country's authorities could not ignore this case and began to develop their own cryptocurrency regulation. The process dragged on for more than three years and the law on virtual currency regulation was adopted only on April 1, 2017. [60] According to the document, cryptocurrency, including Bitcoin, receives the status of a means of payment in the coun-

try and performs a function of currency. At the same time, the law specifies that only Japanese yen is the official monetary unit in the country. Cryptocurrency regulation is assigned to the Financial Services Agency (FSA) of Japan, which is authorized to register cryptocurrency exchanges and monitor their activities.

The aftermath of the Mt.Gox collapse led to the establishment of a number of fairly stringent requirements. For example, companies will have to be externally audited by the Internal Revenue Service, report regularly to the Government, and have at least $100,000 in reserve funds.

The process of obtaining a license will require even more significant financial resources. Companies will have to pay a one-time fee of $300,000. If the review results in a decision to deny a license, the money will not be refunded [59].

In January 2018, the largest virtual asset theft in the modern history occurred. Japanese crypto-exchange suffered again, this time it was Coincheck. As a result of a hacker attack, $548 million was illegally withdrawn from its accounts [61]. This case demonstrated the serious vulnerability of "hot wallets" where cryptocurrency exchange money is stored.

The FSA reacted promptly–the hacked exchange was ordered to review its security system and conduct an internal investigation of the incident, which affected 260,000 people. The regulator also conducted a holistic inspection of all cryptocurrency exchanges in the country. The main goal of the authorities was to make sure that the financial conditions of these companies would allow them to fulfill their obligations to customers [62].

The main result of the events that took place was the Japanese government's approval of the creation of a self-regulatory mechanism for the cryptocurrency industry. On October 24, 2018, Japanese Virtual Currency Exchange Association (JVCEA) was organized and officially recognized by the government regulator [63]. The organization consists of representatives of all crypto-exchanges in the country and has the authority to develop the necessary requirements for operators of crypto-asset exchange services, as well as to apply appropriate sanctions in case they violate the current legislation. The Financial Services Agency of Japan rightly decided that "it is better for experts to set the rules in a timely manner than for bureaucrats to do so" [64].

Another package of measures aimed at regulating the cryptocurrency industry was passed on May 1, 2020. It includes amendments to the Act on Settlement of Funds (ASF) and the Financial Instruments and Exchanges Act (FIEA) [65]. The main purpose of the amendments is to increase regulatory certainty and further protect consumers. The innovations provide for stricter control over derivatives and in-depth development of risk management model related to hacking of crypto-exchanges. In particular, all cryptocurrency firms are now required to separate user deposits from their own funds by engaging third-party cold wallet services. For hot wallet services, the requirements consist of the need to store funds in the same amount as users', so that in the case of a hacker attack, they can recover the stolen funds [65].

In addition, the amendments use the new, more precise legal term "cryptocurrency assets" instead of the former "virtual currency" [65].

Conclusions

As we can see, the legal regulation of digital assets varies greatly around the world. Approaches range from progressive (Japan, Switzerland, Germany, Malta, Estonia) to restrictive (China). The intermediate position is occupied by jurisdictions with little interest in new technologies (Romania, Hungary, Spain, Cyprus, the Netherlands, Portugal, Slovakia, Slovenia). Due to the specific traditions of legal regulation in the United States and the United Kingdom, these countries can-

not be included in any of the above groups, although *de facto* digital financial legal relations are allowed in both of them, and *de jure* are at the stage of their formation. It seems that the objective of the Moldovan authorities in this sense is to develop the most balanced approach to the legalization of the new sphere of social and economic relations from the perspective of the experience of other countries (both positive and negative), having considered the best legal practices.

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CZU 340.134
DOI https://doi.org/10.52388/2345-1971.2021.e1.05

THE CLASSIFICATION OF CODED ACTS

Ion POSTU
Doctor of Law, Associate Professor, Free International University of Moldova,
Chisinau, Republic of Moldova
e-nail: *ion.postu@yahoo.com*
https://orcid.org/0000-0002-5993-8250

Elena TENTIUC
PhD student, Free International University of Moldova,
Chisinau, Republic of Moldova
e-mail: *elenatentiuc1981@gmail.com*
https://orcid.org/0000-0002-7493-133X

In this article, authors analyze different models of codified acts. In carrying out this classification, several features of the codified documents emerged and were presented in a light conducive to study. The authors provide a practical example of doctrinal concepts, based on their empirical observations, with the relevant example for our legal system. Despite the multitude of scientific proposals, the classifications presented in the article are far from exhaustive, but are a theoretical-doctrinal exercise, aimed at systematizing knowledge about the nature and features of codified acts. Finally, the authors conclude that codes are the only form of codified act recognized by national law, although other forms are known in foreign legal systems. Without prejudice to the legal nature of codes and other classified acts, they may be doctrinally classified according to various criteria, which simplifies the understanding of their essence and contributes to their practical application.
Keywords: *codification, legislative technique, systematization of legislation, codified act, code.*

CLASIFICAREA ACTELOR CODIFICATE

În prezentul articol sunt analizate diferite modele de acte codificate. În cadrul efectuării acestei clasificări au ieșit la iveală mai multe trăsături ale actelor codificate și s-au prezentat într-o lumină propice pentru studiu. Autorii oferă o exemplificare practică a conceptelor doctrinare, bazată pe observațiile lor empirice, cu exemplificarea relevantă pentru sistemul nostru de drept. În pofida multitudinii de propuneri științifice, clasificările prezentate în articol nu sunt nici pe departe exhaustive, însă reprezintă un exercițiu teoretico-doctrinar, îndreptat spre sistematizarea cunoștințelor referitoare la natura și trăsăturile actelor codificate. În final, autorii concluzionează că codurile reprezintă unica forma de acte codificate recunoscută de legislația națională, deși în sisteme de drept străine sunt cunoscute și alte forme. Fără a afecta natura juridică a codurilor și altor acte clasificate, acestea pot fi clasificate din punct de vedere doctrinar după diverse criterii, fapt care simplifică înțelegerea esenței acestora și contribuie la aplicarea practică adecvată.
Cuvinte-cheie: *codificare, tehnică legislativă, sistematizarea legislației, act codificat, cod.*

CLASSIFICATION DES ACTES CODIFIÉS

Différents modèles d'actes codifiés sont discutés dans cet article. En effectuant cette classification, plusieurs caractéristiques des actes codifiés ont été révélées et présentées sous un jour propice à l'étude. Les auteurs fournissent un exemple pratique de concepts doctrinaux, basé sur leurs observations empiriques, avec l'exemple pertinent à notre système de droit. Malgré la multitude de propositions scientifiques, les classifications présentées dans l'article ne sont en aucun cas exhaustives, mais elles représentent un exercice théorique-doctrinal, visant à systématiser les connaissances concernant la nature

et les caractéristiques des actes codifiés. Enfin, les auteurs concluent que les codes sont la seule forme d'actes codifiés reconnus par le droit national, bien que d'autres formes soient connues dans les systèmes de droit étrangers. Sans affecter la nature juridique des codes et autres actes classifiés, ils peuvent être classés d'un point de vue doctrinal par divers critères, ce qui simplifie la compréhension de leur essence et contribue à la bonne application pratique.

Mots-clés: *codification, technique législative, systématisation de la législation, acte codifié, code.*

КЛАССИФИКАЦИЯ КОДИФИЦИРОВАННЫХ ДОКУМЕНОВ

В статье анализируются различные модели кодифицированных актов. При проведении данной классификации были выявлены некоторые особенности кодифицированных документов, которые были представлены в свете, способствующем изучению. Авторы предоставляют практический пример доктринальных концепций, основанный на их эмпирических наблюдениях, с соответствующим примером для отечественной правовой системы. Несмотря на обилие научных предложений, представленные в статье классификации далеко не исчерпывающие, а представляют собой теоретико-доктринальное упражнение, направленное на систематизацию знаний о природе и особенностях кодифицированных актов. В итоге, авторы приходят к выводу, что кодексы являются единственной формой кодифицированного акта, признанной национальным законодательством, хотя другие формы известны в зарубежных правовых системах. Не влияя на правовую природу кодексов и других секретных актов, они могут быть классифицированы доктринально по различным критериям, что упрощает понимание их сущности и способствует правильному практическому применению.

Ключевые слова: *кодификация, законодательная техника, систематизация законодательства, кодифицированный акт, кодекс.*

Introduction

The Code is a normative legal act, this feature being its most important and is enshrined in both doctrine and legislation.

Although in the national legislation and doctrine the code represents the only form of the codified normative legal act, on the theory and in the legislation of other states the codified act can take other forms as well. For example, in the Russian Federation are recognized as forms of the codified act, in addition to the code: the fundamentals of legislation (основы законодательства), statutes (уставы), regulations (положения), rules (правила).

Although we are aware that in the local legal system the only normative act that may result from codification is "the code", for the scientific interest of this paper, we will conventionally continue to use the term "code" as a synonym for the term "codified (normative) act", leaving a wider field of maneuver for theoretical approaches.

Main research ideas

Thereafter, we will proceed to the analysis of the main forms of the codified acts and to their classification.

The foundations (bases) of the legislation are a normative legal act that establishes the most important provisions of a certain branch of law or the sphere of public administration, which serve as a basis for the legislative activity of the subjects of the federation[1]. They were widely used in the USSR[2]. They contain definitions, indicate the objectives of the legislation, the principles of legal regulation, determine the guidelines for the legal regulation of these public relations. They enshrine rules-principles, rules-definitions and other specialized rules of law[3]. Codification in the form of legal bases

[1] Краснов, Ю.К., Надвикова, В.В., Шкатулла, В.И. „Юридическая техника: учебник". Москва: Юстицинформ, 2014, с. 481.

[2] Чашин, А.Н. „Теория государства и права: учебник". Москва: Дело и сервис, 2008, с. 483.

[3] Кожевников, В. В. „К проблеме систематизации нормативно-правовых актов в Российской Федерации и о правилах ее юридической техники". In: *Право и государство: теория и практика.* 2016, nr. 4, с. 12.

usually involves the subsequent creation of a relatively independent system of legal acts of different levels and, first of all, codes, because the Fundamentals do not usually contain a detailed regulation of certain relations, lay down the most important provisions, which in most cases should be developed and translated into other legal acts[4]. In the years 1960-1970 in the USSR were adopted 16 Fundamentals of legislation and, in strict accordance with them, the codes of the union republics[5]. Today, the Russian authors cite as an example the Foundations of the legislation of the Russian Federation on the notary of February 11, 1993; Law of the Russian Federation "Fundamentals of the legislation of the Russian Federation on culture" of October 9, 1992 and others[6].

The statute is understood as a complex normative legal act that regulates the legal status of an organization (body) or a certain area of activity of the state[7]. VK Babaev states that the statutes regulate relations in a sphere under state control (e.g., railway activity, inland waterway transport, military service), have as their object of influence the activities of certain bodies and organizations, their rights and obligations, the basis of the relationship with other bodies, organizations, institutions and citizens[8]. For example, in the Russian Federation in 2007, the Urban Road Transport and Electric Land Transport Statute (Устав автомобильного транспорта и городского наземного электрического транссорта)[9] was adopted, replacing a similar statute in force since 1969.

Regulations are usually understood as consolidated legal acts, regulating quite comprehensively and in detail any group of issues related to the legal status or organization of the activities of certain subjects of law (state body, institution)[10]. S.V. Boshno states that there are sufficiently elaborated regulations regarding the legislative technique, citing, for example, the Regulation on the procedure for the implementation of cashless payments by individuals in the Russian Federation in which there are 6 chapters, or the Customs Regulation, consisting of 107 points[11].

The rules determine the order of organization of a certain type of activity[12]. An example in the legal literature is the Rules to Compensate Employers for Damage Caused to Employees by Injury, Occupational Diseases or Other Damage to Health Due to Work Obligations[13] or the Rules for Industrial Safety Expertise[14].

The forms of the abovementioned codified acts, which were applied on the territory of the Republic of Moldova during the Soviet period, are no longer recognized by the current national legislation, but are of scientific interest for a better understanding of the phenomenon of codified acts.

Next, we will make a classification of the codes (codified acts), based on the doctrinal provisions and our empirical observations, with the relevant exemplification for our legal system.

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[4] Бабаев, В.К. „Теория государства и права: Учебник". Москва: Юристъ, 2003, с. 367.

[5] Кожевников, В. В. Op. cit., p. 12.

[6] *Check*: Кодан, С. В. „Акты систематизации законодательства: юридическая природа и место в системе источников Российского права". In: *Научный ежегодник Института философии и права Уральского отделения Российской академии наук*. 2008, nr. 8, сс. 396-397.

[7] Элементарные начала общей теории права. Под общ. ред. В. И. Червонюка. Москва: Колосс, 2003, с. 301.

[8] Бабаев, В.К. *Op. cit*., p. 368.

[9] Федеральный Закон Российской Федерации № 259-ФЗ от 08.11.2007 «Устав автомобильного транспорта и городского наземного элекического транспорта». Принят Государственной Думой 18 октября 2007 года. Одобрен Советом Федерации 26 октября 2007 года.

[10] Бабаев, В.К. *Op. cit.*, p. 368

[11] Бошно, С.В. „Кодификационные акты и другие источники права: проблемы приоритета". In: *Кодификация законодательства: теория, практика, техника*: Материалы Международной научно-практической конференции (Нижний Новгород, 25-26 сентября 2008 года). Нижний Новгород, 2009, с. 125.

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[13] Здунова, Д. И. „Проблематика кодифицированных актов: применение и использование". In: *Казанская наука.* 2015, nr. 10, с. 249.

[14] Бабаев, В.К. *Op. cit.*, p. 368.

1) According to ***the content***, the codes were classified by Yu. A. Tikhomirov in: functional (fiscal); statutory (civil, labor); thematic (road transport); law enforcement (civil procedure, criminal procedure)[15].

2) According to ***the object of the regulation***[16], V.V. Kozhevnikov distinguishes the following types of codes:

- life insurance for a person and a society (civil, fiscal, customs, labor, family, etc.);
- natural resources (land, basement, forestry);
- protection of legal norms (criminal, criminal proceedings, enforcement, contraventions, civil proceedings);
- in the field of transport (air, road transport, rail transport).

3) According to ***the sphere of regulated public relations***, there are branched codified normative acts, inter-branched (complex) and general.

Branch-codified normative legal acts regulate a specific field of public relations, which determines the division of law into branches and institutions. Such codes can be, for example, the criminal, civil, labor, administrative code, etc.

The normative legal act of inter-branch coding (complex) codifies the rules of law, collected in one of different branches of law. At the same time, the criterion for selecting the necessary rules is not their affiliation with the branch of law, but other reasons, for example, the branch of economic activity. An example might be the Air Code.

The general codification of normative legal acts regulates all spheres of public relations subject to legal regulation, but this type of act is today impossible to perform, having more of a historical load.

4) According to ***the coverage of regulated public relations***, A.N. Chashin states that it is necessary to distinguish between codified normative legal acts that fully regulate a certain field of public relations and codified acts that partially regulate a certain field of public relations.[17]

Thus, for example, the Criminal Code of the Republic of Moldova is the only criminal law, being the only source of law for this branch. On the other hand, most of the existing codes only partially regulate a certain field of social relations (the most eloquent example is shown by the Customs Code, which expressly states that "customs legislation consists of this code, of the Law on Customs Tariff, of other normative acts and international agreements in the customs field to which the Republic of Moldova is a part"[18]). We fully support the view in the literature[19] that the level of partial regulation in this group is not uniform.

5) According to ***the coding process***, we can distinguish codes adopted simultaneously and in stages. The first group includes most codified acts, but it is not always possible to adopt a single codification legal normative act that regulates a subject of considerable volume or when social relations evolve[20]. On another occasion we gave the example of the Dutch Civil Code, the elaboration of which began in 1948 and ended in 1992[21]. Also there, talking about continuous coding, we brought the example of the Fiscal Code of the Republic of Moldova, which was completed along the way with new titles. Initially drafted in 1997, the code was

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[15] Тихомиров, Ю. А. „Теория кодекса". In: *Кодификация законодательства: теория, практика, техника*: Материалы Международной научно-практической конференции (Нижний Новгород, 25-26 сентября 2008 года). Нижний Новгород, 2009, c 38-39.

[16] Кожевников, В. В. *Op. cit.*, p. 13.

[17] Чашин, А.Н. „Теория государства и права: учебник". Москва: Дело и сервис, 2008, с. 483.

[18] Codul Vamal al Republicii Moldova nr. 1149 din 20.07.2000, art. 6 alin. (1).

[19] Чашин, А.Н. „Теория юридической систематизации". Москва: Дело и Сервис, 2010, с. 63.

[20] Чашин, А.Н. „Теория государства и права: учебник". Москва: Дело и Сервис, 2008, с. 497.

[21] *Check:* Соловьев, А. А. „Кодификация, декодификация и рекодификация гражданского законодательства: зарубежный опыт и перспективы России". In: *Вестник Федерального арбитражного суда Московского округа.* 2012, nr. 3, с. 96.

supplemented in 2000 by Titles IV (Excise Duties), V (Tax Administration) and VI (Real Estate Tax), and in 2004 by Title VII (Local Taxes).

6) According to ***the novelty***, the codified legal acts adopted can be divided conditionally into completely new acts and into those adopted instead of the previously existing codified legal acts with a similar regulatory subject.

The emergence of new codes is dictated by the evolution of social relations (e.g., the Code of Audiovisual Media Services) or, as in the case of the first years of independence of the Republic of Moldova, by the change of social order. Then the Code of Constitutional Jurisdiction, the Electoral Code, the Customs Code were adopted - acts that regulate non-existent domains within the communist regime. When replacing old codes, we are in the presence of recoding, which we referred to extensively in a previous article. In most cases, the codes that regulate fundamental branches of law (civil, criminal, procedural) are recoded.

7) According to ***the legal force***, in the legal literature there are normative legal acts of direct action and model codes. Model codes are a variety of model laws, which, in some countries of the continental legal system, in federal states and state unions with elements of constitutional and legal relations, are an act of the supreme representative body, which can be used as model for the regulation of identical relations, similar by acts of the bodies of the subjects of the federation or member states of the union of states.[22] The use of the term "law" in this context is a convention, as the legislator, as a rule, does not participate in the creation of model acts. Such documents are not at all normative, they are not imperative in nature; they are of a consultative, guiding nature. At the same time, their role in systematization is obvious. The fundamental feature of model laws is that they do not appear as a result of systematization, but these documents play a systematizing role in themselves, as uniform normative legal acts may appear on their basis.[23]

The model codes enter into force only after their ratification (for example, in the territory of a separate subject of a federal state) or serve as a model for the development of normative legal acts of regional codification.

One of the first code models was the United States Uniform Commercial Code, developed by the American Institute of Law and the National Conference of Commissioners for the Development of Uniform State Laws and approved in 1952. By 1990, several updated editions had appeared in the United States. The Code is more of a model than an act of direct regulation, as it becomes so only after the approval of the legislatures of those states. A number of its rules allow for alternative options. This is not a complete codification, but rather a collection of rules for individual institutions and without the traditional general provisions for civil codes, as the latter fall within the competence of the states.[24]

At the CIS level there are also developing a number of model codes, - of education, criminal.[25]

8) ***In relation to national law***, it is possible to distinguish between national, regional and international codified legal acts.

Any Code of the Republic of Moldova is an example of a national coded act. The regional ones include codified normative acts that regulate their subject on the territory of several states – for example, the long-debated draft European Civil Code. Universal international codified acts include such codified acts, that work on the territory of all states.

9) After correlation with the act of entry into force, a distinction may be made between codified acts which wholly or not co-

[22] Топорнин, Б.Н. „Юридическая энциклопедия". Москва: Юристъ, 2001, с. 540.

[23] Бошно, С.В. *Op. cit.*, p. 130.

[24] Тихомиров, Ю. А. *Op. cit.*, p. 43.

[25] Чашин, А.Н. „Теория государства и права: учебник". Москва: Дело и сервис, 2008, с. 496.

incide with the acts which have implemented them.

Most of our codes contain provisions related to the procedure (date) of entry into force – e.g., the Administrative Code provides that "this Code shall enter into force on April 1, 2019"[26], the Education Code – "this Code shall enter into force 30 days after its publication"[27], and the Code of Constitutional Jurisdiction – "this Code shall enter into force on the day of publication."[28] However, there are situations where the codes do not contain provisions relating to their entry into force and are implemented by special laws. Thus, for example Law No. 205 of 29.05.2003 on the implementation of the Code of Criminal procedure of the Republic of Moldova[29] provides that "the Code of Criminal procedure of the Republic of Moldova No 122-XV of March 14, 2003 is to be implemented on June 12, 2003", and Law No. 1160 of June 21, 2002 on the implementation of the Criminal Code of the Republic of Moldova contains an even broader provision – "the Penal Code of the Republic of Moldova No. 985-XV of April 18, 2002 enters into force on the date of entry into force of the Code of Criminal Procedure of the Republic of Moldova"[30] . Similarly, the legislator did with the civil and procedural codes adopted at the time. It should be noted that the implementing laws are not only about provisions relating to the date of entry into force, but also contain procedural rules on cases at different stages, as well as the action of other pieces of legislation. Another example is the legislation of Romania, where by Law No 71 of June 3, 2011 on the implementation of Law No 287/2009 on the Civil Code[31], the aspects of the entry into force of the new Romanian Civil Code were regulated.

10) According to the ***normative content***, in the legal literature were mentioned: the codes with normative content and the codes of professional ethics. Although, from our point of view, only those with normative content represent a codified normative legal act, we have brought here this classification because of the confusion it can cause, or these acts that regulate the commitments people, most often referred to as code. Thus, T.N. Rachmanina attributes codes of professional ethics as new forms of coding that go beyond the legal tradition under the influence of the factors in the development of the legal system[32]. One characteristic of these codes is that a particular professional community acts as a regulatory body, and such a code includes rules – internal obligations of professional representatives.[33]

As an example, the Code of conduct of the public official (adopted by ordinary Law No. 25 of February 22, 2008)[34], the Code of Ethics of the judicial expert (approved by Government Decision No. 870 of September 5, 2018)[35], the Code of Ethics of the public official with special status from the prison administration system (approved by the order of the Minister

[26] Codul Administrativ al Republicii Moldova nr. 116 din 19.07.2018. În: Monitorul Oficial al Republicii Moldova, nr. 309-320 din 17.08.2018, art. 257, alin. (1).

[27] Codul Educației al Republicii Moldova nr. 152 din 17.07.2014. În: Monitorul Oficial al Republicii Moldova, nr. 319-324 din 24.10.2014, art. 152.

[28] Codul Jurisdicției Constituționale al Republicii Moldova nr. 502 din 16.06.1995. În: Monitorul Oficial al Republicii Moldova, nr. 53-54 din 28.09.1995, art. 87.

[29] Legea Republicii Moldova nr. 205 din 29.052003 cu privire la punerea în aplicare a Codului de procedură penală al Republicii Moldova. În: Monitorul Oficial al Republicii Moldova, nr. 104-110 din 07.06.2003.

[30] Legea Republicii Moldova nr. 1160 din 21.06.2002 privind punerea în aplicare a Codului penal al Republicii Moldova. În: Monitorul Oficial al Republicii Moldova, nr. 128-129 din 13.09.2002.

[31] Legea României nr. 71 din 03.06.2011 pentru punerea în aplicare a Legii României nr. 287/2009 privind Codul Civil. În: Monitorul Oficial al României, nr. 409 din 10.06.2011.

[32] Рахманина, Т. Н. „Актуальные вопросы кодификации российского законодательства". In: *Журнал российского права*. 2008, № 4, с. 31.

[33] Чашин, А.Н. „Теория государства и права: учебник". Москва: Дело и сервис, 2008, с. 485.

[34] Legea Republicii Moldova nr. 25 din 22.02.2008 privind Codul de conduită a funcţionarului public. În: Monitorul Oficial al Republicii Moldova, nr. 74-75 din 11.04.2008.

[35] Hotărârea Guvernului Republicii Moldova Nr. 870 din 05.09.2018 privind aprobarea Codului deontologic al expertului judiciar. În: Monitorul Oficial al Republicii Moldova, nr. 347-357 din 14.09.2018.

of Justice No. 19 of January 21, 2019)[36], the Code of Ethics for teaching (approved by the order of the Minister of Education No. 861 of September 7, 2015) the Code of Ethics for the Border Guard (approved by the Department of Border Police order No. 500 of November 21, 2013)[37] and so on. As we can see, these laws have been adopted both by the legislator and by other specialized central public authorities.

They mainly contain rules of an ethical and moral nature, but there are also legal rules. The codes shall be adopted either within the occupational community of work or by self-regulatory bodies and organizations expressing their interests. In any case, they are a set of self-binding rules, the implementation of which is key to success in work and production activities[38].

In some authors' view, codes as professional self-league rules "play the role of strengthened acts that strengthen people's behavior in the professions[39]" and are to be seen as a variety of legal codes.

In disagreement with them, we take the view that codes of professional ethics and other acts including internal obligations of the representatives of the various professions cannot in any way be regarded as codes, even when adopted by parliament, or, they simply codify the moral rules specific to a given public or economic activity and do not regulate a broad area of important social relations.

Conclusions

As a result of the research, we can say: codes are the only form of codified acts recognized by national law, although other forms are known in foreign law systems. Without prejudice to the legal nature of codes and other classified acts, they can be doctrinally classified according to various criteria, which simplifies the understanding of their essence and contributes to their proper practical application.

The codes represent the primary result of the legislative codification activity and take the form of the normative legal act, but they differ from the uncoded legal acts by the dominant position in the structure of the legislation of the same level; external durability over time; high legal integrity and enhanced internal coherence; the structural division into compartments, of which the general part stands out; the presence of a specific name of the normative act ("code").

The classifications presented in the article are far from exhaustive and represent only a theoretical-doctrinal exercise, aimed at systematizing knowledge about the nature and features of codified acts. We are convinced that, depending on the scientific interest, other categorizations can be made. In carrying out this classification, several features of the codified documents were revealed and presented in a light conducive to study.

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[36] Ordinul Ministrului Justiției Nr. 19 din 21.01.2019 cu privire la aprobarea Codului deontologic al funcționarului public cu statut special din sistemul administrației penitenciare. În: Monitorul Oficial al Republicii Moldova, nr. 24-28 din 25.01.2019.

[37] Ordinul Departamentul Poliției de Frontieră Nr. 500 din 21.11.2013 cu privire la aprobarea Codului deontologic al polițistului de frontieră. În: Monitorul Oficial al Republicii Moldova, nr. 291-296 din 13.12.2013.

[38] Тихомиров, Ю. А. *Op. cit.*, p. 45.

[39] Тихомиров, Ю.А.; Талапина Э.В. „О кодификации и кодексах". In: *Журнал российского права*. 2003, № 3. с. 51.

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CZU 346.546
DOI https://doi.org/10.52388/2345-1971.2021.1.08

GENERALITIES ON LEGAL REGULATION OF CARTEL AGREEMENTS

Dumitrita BOLOGAN
Doctor of Law, Lawjer, Program manager, Foundation „Terre des hommes”,
Chisinau, Republic of Moldova
e-mail: *dumitritabologan@yahoo.com*
https://orcid.org/0000-0002-9799-4691

This article provides an overview of the evolution of competition and competition law, both in the Republic of Moldova and in some European and US countries. Also, the paper crystallizes the conceptual approaches on cartels and offers an analysis of the doctrine of the Republic of Moldova, Romania, Russia, France, Germany, USA, Great Britain regarding cartel agreements. Following the analysis carried out in this paper, it was observed that the contribution of foreign academics in the field of defining and classifying cartel agreements is substantial, and the jurisprudence of the European Commission and the European Court of Justice has served as a source of inspiration and progress for the academic environment, as well as for the development of competition on the market. Although in the Republic of Moldova there is limited research in the field of cartel agreements, it is gratifying that the legislation is harmonized with European directives, and the doctrine is developed starting from the most important international research in the field of protection of competition.
Keywords: *competition, cartel, agreement, law, policies, market*

GENERALITĂȚI CU PRIVIRE LA REGLEMENTAREA JURIDICĂ A ÎNȚELEGERILOR DE CARTEL

Acest articol oferă o privire de ansamblu asupra evoluţiei concurenţei şi a legislaţiei concurenţiale, atât în Republica Moldova, cât şi unele state europene și SUA. De asemenea, lucrarea cristalizează abordările conceptuale asupra cartelurilor și oferă o analiză a doctrinei Republicii Moldova, a României, Rusiei, Franţei, Germaniei, SUA, Marii Britanii referitoare la înţelegerile de tip cartel. În urma analizei efectuate în această lucrare, s-a observat că aportul doctrinarilor străini în domeniul definirii și clasificării înțelegerilor de tip cartel este unul substanţial, iar jurisprudenţa Comisiei Europene şi a Curţii Europene de Justiţie au servit în calitate de sursă de inspiraţie şi progres, atât pentru mediul academic, cât şi pentru dezvoltarea concurenţei pe piaţă. Deși în Republica Moldova se pot atesta cercetări limitate în domeniul înțelegerilor de tip cartel, este îmbucurător faptul că legislația este armonizată directivelor europene, iar doctrina se dezvoltă pornind de la cele mai importante cercetări internaționale din domeniul protecției concurenței.
Cuvinte-cheie: *concurență, cartel, înțelegere, lege, politici, piață.*

GÉNÉRALITÉS SUR LA RÉGLEMENTATION JURIDIQUE DES ACCORDS DE CARTEL

Cet article donne un aperçu de l'évolution de la concurrence, tant en République de Moldova que dans certains pays européens et aux États-Unis. Aussi, l'article cristallise les approches conceptuelles sur les cartels et propose une analyse de la doctrine de la République de Moldova, de la Roumanie, de la Russie, de la France, de l'Allemagne, des États-Unis, de la Grande-Bretagne concernant les accords de cartel. Suite à l'analyse effectuée dans cet article, il a été observé que la contribution des doctrinaires étrangers dans le domaine de la définition et de la classification des ententes est importante, et la jurisprudence de la Commission européenne et de la Cour de justice européenne a servi de source d'inspiration. et le progrès de l'environnement académique, ainsi que pour le développement de la concurrence sur le marché. Bien qu'en République de Moldova, il puisse y avoir moins de recherches dans

le domaine des ententes, il est encourageant de constater que la législation est harmonisée avec les directives européennes et que la doctrine se développe à partir des recherches internationales les plus importantes dans le domaine de la protection de la concurrence.

Mots-clés : *concurrence, cartel, accord, droit, politiques, marché.*

ОБЩИЕ ПОЛОЖЕНИЯ О ПРАВОВОМ РЕГУЛИРОВАНИИ КАРТЕЛЬНЫХ СОГЛАШЕНИЙ

В данной статье представлен обзор развития конкуренции как в Республике Молдова, так и в некоторых европейских странах и США. Также в статье сформулированы концептуальные подходы к картелям и дан анализ доктрины Республики Молдова, Румынии, России, Франции, Германии, США, Великобритании относительно картельных соглашений. В результате проведенного анализа, было отмечено, что вклад иностранных доктринеров в области определения и классификации картельных соглашений является значительным, а юриспруденция Европейской комиссии и Европейского Суда послужила источником вдохновения и прогресса как для академической среды, так и для развития конкуренции на рынке. Несмотря на то, что в Республике Молдова проводится меньше исследований в области картельных соглашений, отрадно, что законодательство гармонизировано с европейскими директивами, а доктрина разработана на основе наиболее важных международных исследований в области защиты конкуренции.

Ключевые слова: *конкуренция, картель, соглашение, закон, политика, рынок.*

Introduction

«Our customers are our enemies» is probably the most famous quote about a cartel agreement made by a member of the international lysine cartel that operated between 1992 and 1995. Competition is the quintessence of the market economy. It means the possibility to choose from several alternatives of products or services offered. Where there is competition, a more efficient allocation of resources is achieved, as the producer constantly monitors the relationship between them and costs. One of the most severe limitation of competition represents cartel agreements - agreement between competitors with the intention of hindering or restricting competition or creating false competition. In the Republic of Moldova there are substantial gaps in the academic analysis of cartel agreements. Although the previous law in force on the protection of competition no. 1103 of 30.06.2000 regulated, in a somewhat rudimentary way, the cartel agreements between the economic agents, there are, practically, no studies or scientific analyzes to explain or interpret the legal norms.

Doctrine on cartel agreements in the Republic of Moldova

Only a few authors, such as Roşca N., Baieş S. and Volcinschi V., Cojocari E., Mărgineanu G., Rusu V., Focşa G. tangentially referred to anti-competitive practices in monographs/studies/law textbooks or business/economic or commercial law courses. The authors Rusu I. and Balan A., in a Comparative Study of Competition Policy very succinctly describe the European Union competition law, analyse and compare the existing law on competition with the provisions of Community law at that time, highlighting some gaps, and proposing certain recommendations.

Prof. E. Cojocari, analyses in her economic law paper the provisions of the law on competition protection regarding cartel agreements, categorizing as null those that increase, reduce or maintain prices, divide markets or create barriers to exit, limit access or remove economic agents from the market.

Only in 2014, lecture notes in competition law were developed, one of the first attempts in this field, but which presents a general ap-

proach to the competition law sphere. Also in 2014, a Ms. Bulmaga O. drafted her doctoral thesis, which presents an innovative comparative study of organizational and legal measures regarding entities that carry out anti-competitive practices in the Republic of Moldova. In this thesis, referring to the anti-competitive agreements, the author uses the notion of «agreement», grounding this choice on the analysis of French and Romanian doctrine. The author investigates in Chapter I the relevant market, as well as the legal nature of the entity carrying out anti-competitive practices, and dedicates Chapter III to cartel agreements, especially to their types - classified according to their character - vertical and horizontal, but also according to other criteria.

In the framework of an European Union support project implemented in the Republic of Moldova, the experts Stuart E. and Mateus A. conducted in 2010, a study aimed at assessing the process of harmonization of the legislation of the Republic of Moldova with European Union standards in the field of competition, in order to provide practical support and expertise in the process of legislative harmonization. However, the paper does not address the cartel agreements from an academic perspective, but rather provides an overview of the Moldova's competition law and policy, a strategic assessment and key recommendations for the further, medium-term development of this sector, from a legal, economic and institutional point of view.

For these reasons, we have decided to examine in this paper the scientific research that has been carried out in other states, including Romania, Russia, in some states of the European Union, as well as in the USA, to understand if there is a uniform practice in tabulating cartels.

Terminological aspects on cartel agreement in the Romanian doctrine

Referring to cartels, some Romanian academics use the term «agreement», which also appears in the Romanian law no. 21 on competition. Irinescu L., together with other authors, Prescure T. and Gheorghiu G., defines «agreement» as any agreement between two or more economic agents (enterprises), expressed or not in writing - regardless of the form, title or nature, the act or clause containing it - tacit, explicit or implicit, public or occult, in order to coordinate competitive behaviour. Horizontal agreements are those agreements or concerted practices which are concluded between two or more undertakings operating at the same market level (producers). It encompasses both real and potential competition, represented by economic operators that can enter the market with a minimum investment, becoming real competitors. We consider that this notion is scarcely used in the literature, most academics adhere to the term «cartel», defining it as a specific oligopoly in which companies not only interact, but enter into a process of explicit cooperation, constituting an agreement - most often, secret - which aims to maximize profit at its level, divided between participants according to various criteria agreed a priori.

Professor Whish R., one of the most remarkable representatives of the British school, in the sixth edition of his book – Competition Law, widely used in Western academic circles, divides the horizontal agreements between undertakings to fix prices, divide markets, restrict production and determine the potential outcome of tenders, in:

- cartels;
- oligopoly, tacit collusion and collective dominance;
- cooperation agreements.

British and European Union considerations on terminology related to cartel agreements

Prof. Ezrachi A., in his research on European Union competition law, summarizes 450 cases of the European Court of Justice, the Civil Service Tribunal and the European Com-

mission, most of which relate to cartels. The academic defines the cartels exclusively on the basis of the decisions of the above-mentioned European institutions. According to Stephan A. - cartels are universally the most serious infringements of competition law. The purpose of complying with the rules on cartel agreements is to ensure both a limitation and a repression of anti-competitive practices. But the problem in this area is that fines cannot prevail over illegal cartel profits, which are usually applied years after the infringement has taken place.

Connor J., collected evidence of the operation of cartels in 279 markets between 1888 and 2005. These include at least 57 which were legally active and over one hundred which were international members. The UK Trade Council studied 125 cartels active in the UK before World War II. Many of these were international cartels, covering a wide range of industries, including electrical machinery, chemicals, coal and steel, textiles, paper, glass and non-ferrous metals. Symeonidis G. found that in the 1950s, in the UK, 36 per cent of industries reported themselves as having secret agreements; and 26 percent independently reported some form of coordination.

Some British authors note that the interest in this field derived mainly from economic disciplines, based on the work of Bishop S., Clarke R. and Morgan E., Estrin S. and Holmes P. , Motta M..

In Germany, we can see that since the 1960s, monographs on Kartellrecht (antitrust or cartel law) have appeared in which the scope of German cartel law is analyzed, American doctrine is studied comparatively with the European Union legislation. The authors discuss the principle of extraterritoriality of transactions and the specifics of the types of agreements and restrictive practices, as well as the application of German law on cartels to such extraterritorial conduct. The German competition authority is called the Federal Cartel Office, whose main task is to implement the 1958 Law Against Restrictions on Competition. Moreover, according to Fiebig A., due to the fact that there is no unanimously accepted definition of what competition means, the legal provisions designed to protect it are very vague.

Tschierschky S., the editor of a cartel magazine in Germany and a former cartel initiator himself, differentiates between the desire of companies to form cartels (motivation), industry conditions (structure), their ability to do so (competence), but also the existence of "practical and concrete cartel policies that have led to the discovery of the numerous ways to face these difficulties in one way or another". He emphasized "psychological" or "ethnological desire" and "the personal moment." The sustainability of the cartel depends on the ability of members to look at customers, not to ignore them, and the ability to reduce prices, sometimes to ensure greater long-term profitability. In fact, prices for coal, iron and steel in Germany fell from British domestic prices after the formation of cartels in the early 20th century. According to Peters L., the German cartel - the Rhenisch-Westphalia coal union, formed in 1893, which employed more than five hundred people, and which consisted of more than 67 firms in 1912, was an independent company with its own headquarters and set about 1400 different prices for different types of coal.

After analyzing some representatives of the French doctrine, which operate with the notion of "agreement", comprising agreements, concerted practices and decisions of business associations, we can emphasize that this notion does not appear in the legislation governing competition, but it is used by competition authorities, courts and doctrine. The author Fallon M., defines, for example, the "agreement" as any formal or informal agreement between companies, achieved through the conscious and deliberate alignment of them to certain practices, which are pursued or which have the effect of achieving competition. Bulma-

ga O., in her doctoral thesis agrees with this opinion. However, it should be noted that the term “cartel” is used in the French literature as a synonym for the notion of “agreement” and indicates a more sophisticated form of horizontal cooperation between independent undertakings, in order to increase their market power.

According to the European Commission, agreements between competing undertakings aimed at fixing prices or sharing the market so that everyone can secure a monopoly position can distort competition rules. Anti-competitive agreements may be public or secret (e.g. cartels), concluded in writing or may be less formal (as “agreements between companies” or as decisions or regulations of professional associations). The companies that are part of the cartels are not exposed to the competitive pressure that forces economic operators to launch new products and offer consumers a better quality offer at competitive prices. As a result, consumers will pay more for lower quality.

The average increase following the setting of prices between companies is estimated to reach 10% of the selling price and the corresponding reduction of production to reach 20%. In some recent cases, it has been shown that cartel participants have raised prices from 30% to 50%.

A number of British authors insist that hard core cartel agreements are in themselves infringements of competition law. This means that there is no need to investigate their pro- or anti-competitive effects and that no market analysis is required. The same idea derives from the judgment of the US Supreme Court in 1958 in the Northern Pacific case, in which the Court admitted that “there are certain agreements or practices which, due to their harmful effect on the competition and lack of any virtue, are rightfully considered unreasonable, and therefore illegal, without the need for a thorough investigation into the exact damage they caused ... And the European courts are gradually moving towards a per se ban on cartels. However, as far as we can see, the jurisprudence still contains certain contradictions.

Analysis of American doctrine related to anticompetitive agreements

According to some representatives of the American doctrine, the cartels do not necessarily represent the opposite of liberalism and competition, but a variation of them. Because regardless of whether they contributed to the development or to the inhibition of economic progress, they shaped the economic and business history starting with the end of the 19th century. Finally, business historians have demonstrated the various effects and services offered by cartels, such as quality standards, technology transfers, or management risks that have extended beyond the conspiracy motivation to raise prices. Moreover, arguments are made in favor of an interesting point of view, according to which cartels do not contribute to the restriction, limitation or distortion of competition, but to its regularization.

Baker D. examines the criminalization of cartels in Europe, from the perspective of an American practitioner who believes that US efforts to use criminal law as a mechanism to punish conspirators and discourage future participants in cartel-type agreements have been quite successful. This author examines the premises of such an approach within the European Union, sets out the advantages of the investigation process, and indicates alternatives to implementation.

According to Levenstein M., from 1992 to 2010, there were approximately 700 convictions issued by the US Department of Justice for cartels, or over 36 convictions for cartel-type agreements per year. It is important to note that, in most cases, a cartel results in more than one conviction, so that this average of raw data from contemporary US cases is not comparable to those in previous studies.

The Russian academics’ overview on cartel agreements

According to Venedictov A. V. (Венедиктов А.В.) , for the specialized academic literature of the Russian Federation, traditionally, the central problem is the classification of some types of entrepreneurial unions and the provisions on cartel legislation. In this sense, a special interest is the monographs of Professor Kaminka A.I. (Каминка А.И.), which analyzed issues related to horizontal anti-competitive agreements at the beginning of the last century and the article by Prof. Sinaiskii V.I. (Синайский В.И.). Also, some important considerations regarding the trade unions and trusts in the Russian Federation were brought by professors Şerşenevici G.F. (Шершеневич Г.Ф.) and Fyodorov A.F. (Федоров А.Ф.). The indicated sources represent the first attempts of the Russian authors in the field of cartel law. It should be noted that the German literature has significantly influenced the work of these authors.

Thus, Kaminka A.I. (Каминка А.И.) defines the notion of “cartel” as a “union of entrepreneurs with the aim of increasing prices or preventing their decrease, either by absolute exclusion or by limiting competition”. It should be noted that this definition includes not only cartels, but also other forms of trade unions.

Profe. Sinaiskii V.I. (Синайский В.И.), provides the following definition of the agreement - “agreement between entrepreneurs that aims to eliminate or reduce competition in the process of production or sale of certain types of products.”

Folster S. and Peltzman S. examined the data for cartels registered in Sweden and found that: “around the year of 1990, there were over a thousand registered cartel agreements, which affected about 15 percent of total sales of goods and services.”

Conclusions

After studying the works of the above-mentioned academics, we concluded that few authors in the Republic of Moldova address the in-force competition regulations, following the adoption of Law 183 of 2012. We found that there is no clarity regarding the definition of the cartel, the difference between common and hard-core cartels. Moreover, in the theoretical sources, there is no systematization of the classification of cartels. In the Republic of Moldova, the field of leniency policy, its application by the Competition Council, the competences of the Council in investigating the causes of anti-competitive agreements, the application of immunity and the reduction of the amount of the fine were not investigated.

In the light of the above, the current paper aimed at shading light over the generalities of cartel definition and regulation in different states, reaching conclusions useful for both theoreticians and practitioners in the field of competition law.

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CZU 347.965.42
DOI https://doi.org/10.52388/2345-1971.2021.e1.06

SOME GENERAL ASPECTS OF MEDIATION: NOTION, ESSENCE, CONTENT

Igor SOROCEANU
PhD student, Academy „Ştefan cel Mare" of the Ministry of Internal Affair,
Chisinau, Republic of Moldova
e-mail: *soroceanu94igor@gmail.com*
https://orcid.org/0000-0002-8719-0454

Conflicts and/or misunderstandings that arise between two or more people or public / private institutions – may eventually form the subject of a judicial process, which will require a long period of time for their objective resolution. More recently in the Republic of Moldova, a new way of alternative settlement of conflicts amicably – mediation-is often publicized. Thus, in the following, we intend to carry out an analysis of the general aspects with reference to the institution of mediation, highlighting in the foreground its concept, essence and content, including the scope and the result that can be obtained. Therefore, taking into account The Commitments of the mediation council established by law no.137/2015, as well as those provided for by art.5 of the collaboration protocol for the promotion of mediation concluded on 28.05.2015, in order to inform litigants about the alternative resolution of disputes through mediation, we want to bring to the general public general aspects about the institution of mediation.
Keywords: *amicable way, conflict, mediator, dispute, positive result, proxim time, advantages of mediation.*

UNELE ASPECTE GENERALE PRIVIND MEDIEREA: OȚIUNE, ESENȚĂ, CONȚINUT

Conflictele și/sau neînțelegerile care apar între două sau mai multe persoane ori instituții publice/private – pot forma într-un final, obiectul unui proces judiciar, care va necesita o perioadă îndelungată de timp pentru soluționarea obiectivă a acestora. Mai recent în Republica Moldova, este deseori mediatizată o nouă modalitate de soluționare alternativă a conflictelor pe cale amiabilă – medierea. Astfel, în prezentul articol, ne propunem ca deziderat efectuarea unei analize a aspectelor generale cu referire la instituția medierii, evidențiind în prim-plan noțiunea, esența și conținutul acesteia, inclusiv domeniul de aplicare și rezultatul care poate fi obținut. Prin urmare, având în vedere angajamentele Consiliului de mediere stabilite prin Legea nr.137/2015, precum și cele prevăzute de art.5 din Protocolul de colaborare în vederea promovării medierii încheiat la data de 28.05.2015, în vederea informării justițiabililor cu privire la soluționarea alternativă a litigiilor pe calea medierii, dorim să aducem la cunoștința publicului larg aspecte generale cu privire la instituția medierii.
Cuvinte-cheie: *cale amiabilă, conflict, mediator, litigiu, rezultat pozitiv, timp proxim, avantajele medierii.*

CERTAINS ASPECTS GÉNÉRAUX DE LA MÉDIATION: NOTION, ESSENCE, CONTENU

Les conflits et / ou malentendus qui surviennent entre deux ou plusieurs personnes ou institutions publiques / privées – peuvent éventuellement faire l'objet d'une procédure judiciaire, qui nécessitera une longue période de temps pour leur résolution objective. Plus récemment, en République de Moldova, un nouveau mode de règlement alternatif des conflits à l'amiable – la médiation-est souvent médiatisé. Ainsi, dans ce qui suit, nous avons l'intention de procéder à une analyse des aspects généraux en référence à l'institution de la médiation, en soulignant au premier plan son concept, son essence et son contenu, y compris la portée et le résultat qui peuvent être obtenus. Par conséquent, en tenant compte des engagements du conseil de médiation institués par la loi n ° 137/2015, ainsi que de ceux prévus par l'art. 5 du protocole de collaboration pour la promotion de la médiation conclu le 28.05.2015, afin

d'informer les justiciables sur la résolution alternative des litiges par la médiation, nous souhaitons porter à l'attention du grand public des aspects généraux de l'institution de la médiation.

Mots-clés: *manière amiable, conflit, médiateur, litige, résultat positif, proxim temps, avantages de la médiation.*

НЕКОТОРЫЕ ОБЩИЕ АСПЕКТЫ МЕДИАЦИИ: ПОНЯТИЕ, СУЩНОСТЬ, СОДЕРЖАНИЕ

Конфликты и/или недоразумения, возникающие между двумя или более лицами или государственными/частными учреждениями, в конечном итоге могут стать предметом судебного процесса, для объективного разрешения которого потребуется длительный период времени. В последнее время в Республике Молдова стал популярен новый способ альтернативного мирного разрешения конфликтов – посредничество. Таким образом, в данной статье мы предлагаем в качестве желаемого анализ общих аспектов применительно к институту медиации (посредничества), выделяя на передний план само понятие, его сущность и содержание, включая результат посредничества, который может быть получен. Таким образом, принимая во внимание обязательства Медиативного совета, установленного Законом № 137/2015, а также обязательства, предусмотренные статьей 5 Протокола о сотрудничестве в целях содействия посредничеству, заключенного 28.05.2015, с целью информирования сторон об альтернативном разрешении споров посредством медиации [4], мы хотели бы обратить внимание общественности на общие аспекты, касающиеся института медиации.

Ключевые слова: *мировое соглашение, конфликт, посредник, судебный процесс, положительный результат, близкое время, преимущества медиации.*

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Introduction

Human rights are respected insofar as they are known and become known only to the degree as they are appropriated. Dissemination of knowledge on respect for fundamental human rights and freedoms is a key area of activity for state authorities. It has become a necessity for each individual to have sufficient knowledge to be aware of the facts of the problem, and subsequently to cultivate and promote tolerance and respect among all members of society [3, p.8].

The state has the obligation to make available to the citizen the entire arsenal of judicial and extrajudicial instruments designed to ensure the effective protection of their rights and their legitimate rights. Respectively, political priorities in the justice sector are aimed at strengthening and effectively promoting alternative dispute resolution institutions: mediation and arbitration [4].

Therefore, considering the commitments of the Mediation Council established by Law no. 137/2015, as well as those provided by Article 5 of the Cooperation Protocol in order to promote mediation concluded on May 28, 2015, in order to inform the litigants about alternative dispute resolution through mediation [4], we would like to bring to the attention of the general public the following general aspects regarding the institution of *mediation*.

The degree of investigation of the problem at present, the purpose of the research. The urgent need to elaborate this scientific approach arises from the author's intention to investigate in detail and in many ways the general landmarks regarding the concept of mediation.

The purpose of this scientific article is to inform the general public, which includes law students, lawyers, lawyers of any category, notaries, those who administer justice and apply it in judicial practice, but also doctrinaires about the notion, essence and content of the method. amicable settlement of disputes.

Materials used and methods applied. In the process of elaborating the scientific article we used several and various methods of scientific research that made possible the proper investigation of the subject, among which we can list: method of analysis, method of

synthesis, method of deduction, systemic method, historical method, and comparative method.

The theoretical and legal basis of the scientific approach includes a series of ways to inform the general public about the notion, essence and content of mediation.

Basic content and results

Mediation has been practiced since ancient times. Historians place its appearance during the Phoenician trade. The practices of ancient Greece and ancient Rome brought an appropriate meaning to the term "mediation." The Romans used several names for the people who dealt with this process, such as: medium, interpolator, conciliator, interlocutor and finally, mediator. In the Middle Ages, in some countries the practice of mediation was banned, and in others it could only be done by the central authorities. In some cultures, the mediator was considered a sacred person who deserved special respect [13].

In essence, ***mediation*** is an alternative way of resolving conflicts amicably, with the help of a third party, who has a special training in the field, called a mediator. Likewise, it is a current process, which is widely used in countries such as Italy, USA, Germany, Romania, Bulgaria, Serbia, and recently in the Republic of Moldova. Through mediation, the parties to the conflict can reach a common understanding without the involvement of the court [6, p.2].

At the same time, mediation aims to resolve disputes amicably and allows the parties to avoid going to court. After mediation, the parties will conclude a transaction through which they will resolve the conflict. This action is guided by a mediator who is a third party, specialized in resolving disputes and who, in conditions of neutrality, impartiality and confidentiality, conducts the mediation procedure, facilitating negotiations between the parties [12].

A ***mediator*** means a third party with special training, which ensures the mediation process in order to resolve the conflict between the parties. The mediator applies his/her skills to the maximum, using communication and negotiation techniques, involving the parties in a constructive discussion, with a favorable final result for each [7, p.2].

Like any person in his/her service activity, the mediators in the process of carrying out the professional activity, are guided by the following principles:

1) voluntary participation in mediation;
2) process confidentiality;
3) the freedom to choose a mediator;
4) equality of the parties in the proceedings;
5) independence from the parties;
6) neutrality towards the parties;
7) the mediator's impartiality;
8) the flexibility of the mediation process [7, p.2].

In other words, mediation is the method of reconciliation where the rights of every human being are respected. Together with a mediator, conflicts arising from infringements of rights can be resolved quickly, confidentially and at minimal cost [8].

The role of the mediator is to help the parties find a convenient and lasting solution to their problem and reach a consensus that satisfies all parties. The mediator acts impartially and neutrally. He cannot impose a solution, it must appear in the negotiation process, but he is responsible for developing the most effective communication techniques, facilitating discussions and building an agreement between the parties. Mediation is a voluntary procedure, is conducted in complete confidentiality and is based on the trust that the parties place in the mediator. Thus, it is considered one of the most effective solutions for resolving conflicts and contributes to the harmonization of social life [9].

In the field of human rights protection, mediation has the following benefits:

a. confidential process;

b. independence, impartiality and neutrality of the mediator;

c. equality of the parties in the proceedings;

d. lack of moral constraints [8].

Mediation may be initiated by either party, on its own initiative, as well as on the recommendation of public authorities, courts or the prosecution body. The parties have the right to determine by mutual agreement all aspects related to the initiation, conduct and completion of the mediation process, and the mediator, until the conclusion of the mediation contract, is obliged to inform the parties about the purpose of the mediation, procedure, rights and obligations of the mediator and parties, as well as the consequences of the mediation process, the effects of signing a transaction and the consequences of non-compliance with the provisions of the signed transaction [12].

Therefore, in general, mediation has other benefits than in the field of human rights protection, these can be stated in the following order:

✓ process confidentiality;
✓ minimum expenses;
✓ reduced time for conflict resolution;
✓ process flexibility;
✓ communication between the parties;
✓ lack of stress;
✓ voluntary procedure;
✓ favorable solutions for each [6, p.2].

Under these conditions, there are no fixed costs for mediation. The mediator's fee shall be agreed between the parties and the mediator. In criminal cases, where reconciliation removes criminal liability, there is the possibility of receiving compensation from the state for mediation costs [12].

The stages of the mediation process are:

Stage I - initiation of mediation;

Stage II - conducting mediation;

Stage III - termination of mediation, settlement of the dispute, signing of the transaction [6, p.2].

Compared to other dispute resolution, mediation enables disputes between the parties to be resolved quickly and at low cost. Sometimes it takes years to examine litigation in court. The parties waste time, spend money on legal aid, and the result is not always what they expect. In the mediation procedure, on the other hand, conflicts can be resolved in a single mediation session [12].

The areas of use of mediation are as follows:

1. civil litigation;
2. criminal litigation;
3. family disputes;
4. consumer protection disputes;
5. labor disputes;
6. commercial disputes;
7. school disputes;
8. ethno-cultural disputes [6, p.2].

Mediation in civil and commercial disputes involves the settlement of a conflict between two or more parties on an equal footing and in conflict with each other. The object of these misunderstandings is the violation of certain contractual conditions for the conclusion, interpretation, execution or termination of a contract, the violation of certain civil or commercial rights or obligations.

Both the Civil Code and the Law on Mediation no. 137 of July 3, 2015 provide for this method of resolving conflicts, being very effective, namely in the civil and commercial field. An example of this type of conflict is when a pre-contract for the sale of an apartment has been signed. Later, however, the buyer found that the apartment needed to be repaired. Neither contracting party agrees to pay for the repairs, but both want to end the contract in the end.

By using a mediator, both parties, on an equal footing, could negotiate a favorable transaction for each. In this way, the contract can be successfully concluded [5, p.2].

In accordance with the provisions of Article 7(2) Family Code, it follows that 'family rights shall be protected in certain cases by mediators' and, according to Article 60(4) of the same legislative act, it is understood that "disputes between parents concerning education and training of children shall be settled by the local supervisory authority, who may recommend that parents refer to a mediator for the settlement of the dispute" (2, article 7(2) and article 60(4)). **Mediation in family disputes** is thus a way of resolving family disputes in the best interests of all members, but especially in the interests of children, by means of a mediator, with neutrality, impartiality and confidentiality.

As provided for in both the Law on mediation No. 137 of July 03, 2015 and the family Code of October 26, 2000, family mediation comes to eliminate the danger created by family problems for the child's upbringing and development, as well as to defend the child's best interest.

An example of this is when a divorce couple wants not to cause pain for their child. However, they have difficulties in communicating and cannot reach a consensus on the determination of the child's place of living and the division of property.

By calling on a mediator, each party can present its arguments in a calm manner. In this way, they will show that they care about the child and will do everything possible for his/her own good, despite his/her personal offenses [5, p.3].

Consistent with this, it should be noted that, however, there are disputes that the parties cannot resolve through the transaction, because the law provides for another way. For example, the mediator cannot divorce the parties, as this is only done by the competent bodies. However, spouses can go to a mediator to resolve disputes arising from divorce: the establishment of the child's place of residence or the division of property [12], as stated above in the process of mediating family disputes.

Mediation in disputes at work provides for the settlement of disputes between employees and employers regarding economic, professional or social interests, or the rights resulting from the development of the employment or service relationship.

The Law on Mediation no. 137 of July 3, 2015 offers the possibility for employees and employers to resolve any labor dispute through a mediator, in conditions of confidentiality, impartiality but also in a short time.

A relevant example may be when a new director has joined a company. He/she is not happy with the way one of his/her employees works. In turn, the employee considers that the tasks imposed by the director are not part of his / her duties. Their misunderstandings cause discomfort to both of them and the other employees.

A mediator can put an end to this conflict, help both the director and the employee to express their requirements and needs, so as not to resort to dismissals / resignations [5, p.4].

Mediation in the field of consumer protection. Consumer protection disputes can be resolved through mediation, when the consumer alleges damage as a result of the purchase of defective products or services or violation of other rights established by consumer protection legislation, caused by the economic operator.

An example of this may be, that person A bought a refrigerator from store X. However, when he/she tried to install it at home, he/she noticed that it had a defect. Upon return, the seller refused to receive the refrigerator back, claiming that the appliance was in an ideal condition when it was sold.

A mediator can help the consumer to resolve the dispute without claiming in court the store from which he purchased the refrigerator [5, p.5].

Administrative mediation applies to disputes between public institutions and individuals and legal persons, following the issuance of acts or actions that have led to conflicts.

Provided by the Law on Mediation No. 137 of July 3, 2015, this way of resolving conflicts between public authorities and private individuals and legal entities is efficient, confidential and independent of all parties involved.

An example of an administrative dispute is when *a citizen asked for a permit to build a garage near his house, but the local administration (City Hall) refused because the garage will be 50 cm on the private land of the City Hall.*

By calling a mediator, the citizen and the local authorities will be able to reach a common denominator. The mayor's office could approve the citizen's request, provided that the portion of the land is purchased from the public administration or in some other way identified by the parties [5, p.6].

Mediation in the criminal and contravention field provided by the Criminal Procedure Code of 2003, the Contravention Code of 2008, but also the Mediation Law no. 137 of July 3, 2015 is an effective way of resolving a conflict arising from the Commission of a minor or less serious offense or crime.

An example in this sense would be that at the prior complaint of citizen A, who was recognized as an injured party due to bodily injury, a criminal case was initiated against citizen B under art.152 paragraph (1) of the CPRM (Penal Code of the Republic of Moldova). In accordance with Article 21 paragraph (1) of Law no. 137 of July 3, 2015 on mediation, the parties were proposed the information meeting on mediation, following which the mediation procedure was initiated. As a result, the criminal side was settled amicably and the injured party withdrew the prior request, which served as the basis for terminating the criminal case.

Finally, citizen A agreed that the unpleasant situation should be resolved through mediation, thus avoiding criminal sanctions for citizen B, but also saving time, which could be lost in courts [5, p.7].

In order to make this research segment more widespread, it is notable that people use mediation at different levels and in multiple contexts: from minor disputes to discussions about peace in a global manner. Some of the cases that reach the mediators are:

a) family: prenuptial agreements; debates on finances or the budget; separation; divorce; child custody; family business; disputes between parents and adult children; behavioral problems; real estate disputes.

b) at work: discrimination; harassment; labor administration; complaints and damages.

c) public disputes: environmental; land use.

d) other disputes: of the tenants' association; contracts of any kind; personal injury; partnerships; non-profit organizations; violence prevention; victim mediation; school conflicts.

Due to the particular nature of this activity, each mediator uses personal methods (the law does not impose certain methods) that could help solve the problems exposed. Thus, mediation involves several stages or aspects:

1. controversy, dispute or difference of opinion between two people or the need to resolve an issue;
2. making the decision with both parties by mutual agreement rather than imposing the solution by a third party;
3. the willingness of the parties involved to negotiate the resolution of the problem and to accept discussions on the interests and objectives pursued;
4. the intention to obtain a positive position with the help of an independent and neutral third party [14].

The mediation of the dispute takes place within a period not exceeding three months from the date of conclusion of the mediation

contract, unless the parties have agreed on another term. Pending the expiry of the time limit initially set, the parties may request its extension. If the mediation takes place in a judicial process, the mediation period can be extended only with the consent of the criminal investigation body or the court. The mediator has the right to be informed of the merits of the case. The parties shall decide, by mutual agreement and with the assistance of the mediator, on the rules and duration of the mediation process. If the parties have not reached an agreement on the rules for conducting the mediation process, the mediator shall be entitled to conduct the mediation process in such manner as he considers appropriate, taking into account the circumstances of the dispute, the wishes of the parties and the need for the proceedings. a reasonable time [12].

The only collegiate body, with the status of a legal entity under public law, established under the conditions of Law no. 137/2015 for the implementation of policies in the field of mediation is - the Mediation Council [1, art. 9 para. (1)].

The Mediation Council is a body set up under the Ministry of Justice in order to organize and coordinate the activity of mediators. It is composed of 9 members appointed by order of the Minister of Justice, based on the results of the public competition organized by the aforementioned Ministry. It is necessary for at least 7 members of the Mediation Council to be among the mediators or to be part of the scientific-didactic body or within some non-commercial organizations. The term of office of the members of the Mediation Council is 4 years, with the possibility of extending it once. The Mediation Council is chaired by a chairman, elected by its members for a term of 2 years [10].

The most important aspects of the mediators' code of conduct include:

a) the commitment to inform the participants in the mediation process;

b) adopting a neutral position given by the parties involved, without resulting in conflicts of interest;

c) treating the problem in an objective way;

d) mediators should not provide legal advice;

e) mediators need to continuously improve their skills through training programs;

f) mediators should only practice in areas where they have the necessary experience and training [15].

The parties have the right to waive mediation at any time. They shall be personally involved in the mediation process, and if one of the parties, for good reasons, is unable to attend the mediation process in person, he or she shall authorize a representative. During the mediation process, the parties may be assisted by lawyers, translators and / or interpreters, as well as specialists in the field. With the consent of the parties, other persons may participate in the mediation process. During the mediation process, the mediator may meet in joint sessions with both parties or in separate sessions. Mediation may cease if the parties sign a transaction or if the mediator finds that they cannot reach an agreement. The proceedings shall be terminated if one or both parties waive their mediation or if the time limit set for such proceedings has expired. This also happens if the mediator withdraws from the trial or if one of the parties has died [12].

Finally, we mention some arguments of the mediation practitioners:

"The greatest success of mediators is mediated causes, when the parties are satisfied in the end, and as a result become the promoters of mediation in their circle!" (Dumitru Lefter, mediator, Republic of Moldova).

"We are mediators everywhere, anytime, and not just in the office. We all want mediation to find its well-deserved place in society. Therefore, promoting mediation is a duty. " (Ana Cristina Margu, mediator, Romania, Râmnicu Vâlcea County).

"Mediation allows you to find a creative solution to resolve the conflict through which no one loses, all parties win." (Felicia Chifa, mediator).

"Mediation has a transformative effect on society." (Elena Damaschin, mediator) [7, p.2].

Conclusions

In order to generalize the subject under investigation, we specify that mediation has some advantages, which can be highlighted in particular:

1. flexibility - during the mediation the parties agree with the mediator the date, time and place of the meeting depending on the possibilities of presentation of all participants;

2. low costs - mediation is a cheaper procedure compared to other dispute resolution procedures, and the costs are equally borne by the parties;

3. confidentiality - the entire mediation procedure involves the confidentiality of data and information disclosed during the hearing. In this way, participants protect their image and are encouraged to be open with each other without fear of public exposure of personal information;

4. speed - the duration of the mediation process depends on the skill of the mediator and the willingness of the parties to resolve the dispute. Depending on the complexity of the case, an agreement between the parties can be reached in a few hours;

5. voluntary and informal procedure - the call on the mediator is made only by mutual agreement, and the mediation contract can be terminated at any stage of the procedure. The lack of strict rules of the mediation procedure allows those involved in the conflict to adapt more easily and find the best way to an advantageous agreement;

6. maintaining the relations between the parties - by amicably resolving the dispute, the parties maintain, rebuild and improve the relations they had before the dispute arose. With the overcoming of the conflict situation, new bridges of collaboration between the parties may appear;

7. favorable solutions - through mediation the solution belongs exclusively to the parties, the procedure being based on a constructive dialogue, interaction, negotiation and identification of a favorable solution for all participants. The mediator does not impose anything, but only helps the parties to reach a compromise more easily;

8. complexity - mediation can be used in resolving a wide range of conflicts, including disputes arising from civil, commercial, family, criminal relations, as well as other reports provided in Law no. 137 of July 3, 2015 on mediation;

9. convenience - the mediation sessions take place in a relaxing and friendly atmosphere, where only the mediator, the parties and the people they agree with participate. In this way, stress, frustration and discomfort can be avoided by participants in the conflict [11].

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CZU 347.965.42(498-478)
DOI https://doi.org/10.52388/2345-1971.2021.e1.07

THE NEED TO STRENGTHEN THE MEDIATION INSTITUTION IN COMMERCIAL CASES IN ROMANIA AND THE REPUBLIC OF MOLDOVA

Constantin MIHALESCU
PhD student, Institute of Legal, Political and Sociological Research of the Academy of Sciences of Moldova, Chisinau, Republic of Moldova
email: *constantin_mihalescu@yahoo.com*
https://orcid.org/0000-0002-8762-0311

Mediation has represented and represents an alternative for state justice that impartially solves a conflict between two parties. Mediation, as it's generally known today, appeared in Europe in '90s through the American branch, and imposed through Directive CE / 52/2008 of the European Parliament, that all Member States need to take steps in including the mediation in civil and commercial cases where issues appear most frequently related to the parties' affiliation to different and cross-border legal systems. In Romania, the mediation institution operates based on Law no. 196/2006 in regards to mediation and mediator profession, and in the Republic of Moldova based on Law no. 137/2015 in regards to mediation. I firmly believe that that the procedure for mediation in commercial disputes needs to be adapted, considering the fact that is a special type of mediation, as the mediator is required to possess certain knowledge and qualities specific to this field. I, therefore, consider that the specific legislation is insufficiently regulated, and due to this context, the institution of commercial mediation is in a vegetative state at this moment.
Keywords: *mediator, conflict, dispute, mediation law, penal mediation, commercial mediation, family mediation.*

NECESITATEA ÎNTĂRIRII INSTITUȚIEI MEDIERII ÎN CAUZE COMERCIALE ÎN ROMÂNIA ȘI ÎN REPUBLICA MOLDOVA

Medierea a reprezentat și reprezintă o alternativă la justiția statală prin care se soluționează pe cale amiabilă un conflict între părți. Medierea, în forma pe care o cunoaștem astăzi, a apărut în Europa în anii '90 pe filieră americană, pentru ca, prin Directiva CE/52/2008 a Parlamentului European, să fie practic obligate toate Statele Membre să facă demersuri în vederea includerii medierii în cauzele civile şi comerciale unde apar cel mai frecvent aspecte legate de apartenenţa părţilor la sisteme de drept diferite, respectiv transfrontaliere. În România, instituția medierii funcționează în baza Legii nr.196/2006 privind medierea şi organizarea profesiei de mediator, iar în Republica Moldova, în prezent, prin Legea nr. 137/2015 cu privire la mediere. Autorul consideră că procedura privind medierea în litigii comerciale trebuie adaptată, fiind un tip de mediere special, întrucât se pretinde ca mediatorul să posede anumite cunoștințe și calități specifice acestui domeniu. Legislația specială, în opinia autorului, este insuficient reglementată, iar din această cauză instituția medierii comerciale este în stare vegetativă.
Cuvinte-cheie: *mediator, conflict, litigiu, legea medierii, mediere penală, mediere comercială, mediere familială.*

LA NÉCESSITÉ DE RENFORCER L'INSTITUTION DE LA MÉDIATION DANS LES AFFAIRES COMMERCIALES EN ROUMANIE ET EN RÉPUBLIQUE DE MOLDOVA

La médiation représente et représente une alternative à la justice d'État par laquelle un conflit entre les parties est résolu à l'amiable. La médiation, sous la forme que nous la connaissons aujourd'hui, est apparue en Europe dans les années 1990 sur la chaîne américaine, de sorte que, par la directive EC/52/2008 du Parlement Européen, pratiquement tous les États Membres sont tenus de prendre des mesures pour inclure la médiation dans les affaires civiles et commerciales où les questions liées à

l'appartenance des parties à des systèmes de droit différents, respectivement transfrontaliers, se produisent le plus fréquemment. En Roumanie, l'institution de médiation fonctionne en vertu de la loi no 196/2006 sur la médiation et l'organisation de la profession de médiateur, et en République de Moldova, actuellement, en vertu de la loi no 137/2015 sur la médiation. Je pense que la procédure de médiation dans les litiges commerciaux doit être adaptée, étant un type particulier de médiation, car le médiateur est tenu de posséder certaines connaissances et qualités spécifiques à ce domaine. C'est pourquoi je considère que la législation spécifique est insuffisamment réglementée, et pour cette raison l'institution de la médiation commerciale est dans un état végétatif.

Mots-clés: *médiateur, conflit, litige, loi de la médiation, médiation pénale, médiation commerciale, médiation familiale.*

НЕОБХОДИМОСТЬ УКРЕПЛЕНИЯ ИНСТИТУТА ПОСРЕДНИЧЕСТВА В КОММЕРЧЕСКИХ ДЕЛАХ В РУМЫНИИ И В РЕСПУБЛИКЕ МОЛДОВА

Посредничество было и остается альтернативой государственному правосудию, посредством которого спор между сторонами разрешается мирным путем. Посредничество в том виде, в каком мы его знаем сегодня, возникло в Европе в 1990-х годах на американской основе. Поэтому, в соответствии с Директивой ЕС / 52/2008 Европейского парламента, практически все государства-члены обязаны предпринимать шаги по включению медиации в гражданские дела и в коммерческие, где наиболее часто возникают аспекты, связанные с принадлежностью сторон к разным правовым системам, соответственно, трансграничным. В Румынии институт медиации действует на основании Закона № 196/2006 о медиации и организации профессии медиатора, а в Республике Молдова в настоящее время действует Закон №. 137/2015 о посредничестве. Автор считает, что процедуру медиации в коммерческих спорах необходимо адаптировать, поскольку она является особым видом медиации, а еще и потому, что медиатор должен обладать определенными знаниями и качествами, характерными для этой области. Также он придерживается мнения, что конкретное законодательство недостаточно регламентировано, и поэтому институт коммерческого посредничества находится в стадии вегетации.

Ключевые слова: *медиатор, конфликт, судебный процесс, закон о посредничестве, уголовное посредничество, коммерческое посредничество, семейное посредничество.*

Introduction

In a controversial world in which different points of view are generated about the historical development, determined by the existence of the mechanisms of certain orders and the tendency of their explanation, the identification of ways of permanent development of social relations in general and trade relations in particular appears, in this context, as a necessity.

As long as society is constantly evolving, in the systemic analysis of the social environment, the relationship between members of society or between individuals and society, with their respective cognitive-axiological connotations, the issue of perceived conflict at individual or collective level raises the issue of mediation in there social life.

Mediation, more like other similar approaches, has the *"fundamental ontological and axiological component, in relation to which it legitimizes and gives validity to any form of knowledge to some of the conflicts of society",* of the individual and of the relationship between society and individual, at a given time [6, p.10].

Therefore, in order to determine the sociological nature of the institution of mediation, we establish, in advance, the notification of the process of appearance , followed by its generic development.

With the exception of the ancient period, where the field of mediation was insignificantly outlined within the limits of freedom of will in an exclusive manifestation of private law, the evolution the society took over this institution and applied it to some institutions

of public law, with a marked contemporary development in the field of international law, mediation was being used, with its valences of communication and negotiation since the seventeenth century, as one of the functions of the ambassador. The full international consecration , however, was obtained in the Hague Convention of October 18, 1907 [24], in Title 2, art. 2, it is stated that *"no weapons will be used before the mediation of the conflict"*. At the same time, mediation has been practiced since ancient times, but it has only gained social importance in the last 30 years. The most widespread theory is that of the American model from the 1980s which was borrowed and applied in Europe.

Officially, in this structured form, mediation was marked in Europe by the adoption in 1998 by the Council of Europe of Recommendation EC 1/1998 on the use of mediation in family law cases [15], with priority in situations where minors are affected . This official birth certificate was subsequently succeeded by EC Recommendation 19/1999 on the use of mediation in criminal cases [15], then by EC Recommendation 10/2002 on the use of mediation in civil matters [15], because, by Directive EC / 52 / 15 [15], to oblige all Member States to take steps to include mediation in civil and commercial cases where membership issues are most common for parties with different legal systems, respectively cross-border.

A unanimously accepted European model of mediation has not yet been structured in Europe, because every country has adapted its mediation regulations to the local specifics.

Being a relatively new institution, established in Romania by Law no.196 / 2006 on mediation and organization of the mediator profession [20], and in the Republic of Moldova, initially by Law no.134 -XVI / 2007 on mediation [18] , then repealed by Law no. 137/2015 on mediation [19], the institution of mediation is not yet consolidated.

Strengthening the institution of mediation, especially in this international context, is becoming an urgent objective.

In the current international context created by the pandemic crisis, a new conflict is expected to be foreseen for the division of the world between the great powers, but this time it is much more subtle and perverse.

The main actors this time are the USA and China. Each of these superpowers with their allies is trying to dominate the planet by seizing resources, markets, hi- tech technology , bright minds, and so on.

For example, China has taken over the American model of hi-tech development in the famous Silicon Valley (USA) and built a Hi - Tech Park in Shenzhen with 600,000 programmers, while the US is investing nearly $ 200 billion. in Hi - Tech technology to counter China's rise.

It is gratifying that young people in Romania and the Republic of Moldova have the opportunity to learn and develop these skills as well, but the legislator also has a huge obligation to create an appropriate legal framework for this purpose.

In the near future, once scientific progress is irreversibly installed in the civilized world, trade relations will develop unprecedentedly, in which case a wealth of business opportunities will arise that will inevitably create smaller trade disputes. or greater complexity.

In this situation, the institution of mediation, in general, and the institution of mediation in commercial matters, in particular, both in Romania and in the Republic of Moldova must be prepared with authorized mediators capable of managing such conflicts.

Research methodology used

Starting from a retrospective, historical approach of the researched field, the article offers the possibility to acquire the theoretical foundations of the mediation institution and the practical applicability of this theoretical

knowledge obtained . Mediation being a legal institution regulated by legal norms has as a substitute the same methods of application to understanding and legal action as of any branch of law.

That is why methods used in the study of the mediation institution are similar to the ones used in the study of law.

The institution of mediation, like law, by nature and its destination is a phenomenon with many and deep connections and social and human interference. Therefore, the research of the mediation institution will necessarily expand its sphere of knowledge and deepening also on some areas of interference in which an important place was occupied by the practice of mediation in all its complexity, purpose and finality of the process.

The research of the phenomenon of mediation, part of the research of the legal phenomenon, is carried out by using the same methods used in the study of law: general methods and concrete methods.

Various general methods may be used in this article, such as: generalization and abstraction method, logical method, historical method, comparison method, sociological method, systemic analysis method, and prospective or forecasting method.

Current state of research regulations in the legislation of Romania

The current form of the Romanian mediation law, Law no. 196/2006 on mediation and organization of the mediator profession, reduces the role of mediator only to the attribute of facilitating dialogue, and this attribute is not a serious reason why a litigant, especially one who has to solve a commercial litigation would call for a mediator.

The literature calls this type of mediation, *facilitative mediation* , and involves a certain ability of the mediator to guide the parties, through the communication process, to focus on their own opinions, while refraining from expressing their opinion on a certain agreement between the parties [11, p.7-51].

According to the main promoter of this style of mediation Leonard Riskin , *"the mediator who uses this style of mediation has as its main mission to strengthen and clarify the communication between the parties in order to help them decide what to do* " [11, p.119].

The role of facilitator of the mediator in the mediation process is considered to be the main role in almost all definitions given to mediation. From the economy of the provisions of Law no. 192/2006 on mediation and the organization of the mediator profession, the idea transpires that in the Romanian law of mediation the role of mediator is reduced, mainly, to facilitating the mediation process. The same is revealed in the first law of mediation in the Republic of Moldova, Law no. 134/2007 on mediation.

This type of mediation has as main characteristic elements: the orientation of the parties by the mediator, the concentration of the mediator and the mediation on the parties, the accentuation of the communication and the concentration on the pursued interest [8, p.30-33].

The first characteristic element, *the orientation of the parties by the mediator,* requires an acting strategy on the part of the mediator, which is sometimes even contrary to his/her belief of the fair and equitable solution to the case submitted for mediation by the parties, limit itself to the status of assisting and helping the parties to reach an acceptable settlement.

The facilitator is therefore not interested in achieving a certain result, he/she subtly coordinates the mediation process and assists the parties in their deliberations. However, it may make some recommendations [8, p.30-33], but not on making a certain decisive resolution decision. That is why, in facilitating mediation, the mediator cannot make recommendations, give advice or express his opinion on the so-

lutions accepted by the parties, which, in our opinion, creates a huge frustration to a mediator with some expertise.

Moreover, by setting up a narrow framework for the demonstration of the profession of mediator by the provisions of the mediation law, coupled with the fact that the profession cannot demonstrate its validity in a divided, deceived, lied and derailed society, a reconsideration of the mediation law is required, in the sense that facilitating mediation with this characteristic dominant element included, constitutes only a first step in actual mediation. It is only after the mediator has been able to facilitate communication between the parties that genuine mediation could be made in order for the parties to know the extent of their rights and obligations, and not to enter into an agreement based on a momentary impulse, the lack of full knowledge of these rights and obligations and of the consequences resulting from the implementation of the agreement reached by the mediation agreement.

The second characteristic element, *the focus of the mediator and the mediation on the parties*, reinforces the first element through which the mediator focuses on the interaction process and materializes by helping the parties to communicate better. Once a good communication is made, it is assumed that the parties will become more resourceful and, without amputating their autonomy of action and decision, will be able to determine the purpose of mediation, to approve the mediation process, to assess issues and information, to generate options and decide how they want to act to resolve the conflict. Neither the legal representatives of the parties can influence the decision, their role is limited to assisting and advising, so as not to deviate from the negotiation.

The third characteristic element, *the strengthening of the communication between the parties*, presupposes that the mediator achieves and consolidates an efficient communication between the parties. To this end, the mediator must, first and foremost, communicate effectively with each party. If necessary, the mediator may restrict direct communication between the parties, until the parties are prepared to engage in effective communication with each other.

Finally, ***the last characteristic element*** of facilitating mediation is *the focus on the interest pursued by the parties.*

Analyzing the conflict as a whole, the mediator helps the parties to examine their own and the other party's needs, to identify options to help increase the degree to which the parties can achieve what they want, and if necessary, to help the parties negotiate limited resources.

As we can see, the role of a mediator in a commercial dispute, in which the communication of the parties is not limited to subjective issues of communication, but must discuss specific issues, accounting, marketing, market research, forecasting, expertise, exchange rate, associates, dividends, shareholders, business partners, goodwill, etc., we can assume that reducing the role of the mediator only to facilitate dialogue is not enough.

This type of mediation is rightly suitable for family mediation, criminal mediation, labor relations, consumer protection, etc., generally in cases where we are dealing with a multitude of subjective factors, where communication channels are blocked. In the case of mediation of trade relations, we are often not dealing with this.

The experience of the company managers shows that the former Romanian civil law on commercial matters provides more consistency and simplicity in the process.

Thus, in the event of a dispute the interested party argued on the basis of the provisions of Article 109(2) C.proc.civ. (Code of Civil Procedure) or on the basis of Article 6(2) of NCCiv (the New Civil Code) if the legal acts and acts concluded and/or committed occurred before February 15, 2013, the provisions of the former provisions of Article 720^{1}C.proc.

civ.,(Code of Civil Procedure), that the dispute is in commercial matters that can be valued in money. The commercial character of the dispute was also argued by the fact that according to Article 56 of the Romanian Commercial Code, *"if an act is commercial only for one party, all contractors are subject, as far as this act is concerned, to the commercial law, except for the provisions concerning the person of the traders themselves and the cases where the law would otherwise require."*

The prematurely exception of the application for legal action, arising from the failure to comply with Article 720[1] C.proc.civ (Code of Civil Procedure), had the character of public order and can be invoked, in accordance with the second sentence of Article 136(1), at any stage of the case, if the claimant had brought an action before the court without performing the mediation procedure or the prior direct conciliation procedure, for the reasons set out above, the action against the defendant trader was inadmissible.

In the new Romanian civil legislation, this provision no longer exists, as the initiators of the new laws argued that this procedure was formally fulfilled anyway, and this unnecessarily delayed the process.

We cannot agree with this reasoning for the simple reason that the litigants who voluntarily followed this procedure sometimes found a way to settle the dispute amicably and the case no longer reached the court. Sometimes it was just a minor misunderstanding, an isolated accident, an excusable mistake, and so on.

At present, these litigations with these shortcomings are pending before the court, and the court, which is already overcrowded, is only further delaying the case.

De lege ferenda, the obligation to try to resolve a trade dispute amicably should be included in the Romanian legislation, not necessarily through mediation, as there may be situations in which the parties can communicate and de-escalate themselves, instantly, any trade dispute. If necessary, they may call on a trade dispute mediator to guide and clarify them in such a way as to conclude a negotiated and acceptable agreement for each of the parties, and if such an agreement initialed by that mediator would also have power similar to a court decision or notarial deed, constituting an enforceable title, would substantially contribute to the strengthening of the institution of commercial mediation.

It goes without saying that such a mediator cannot go through such a procedure simply by facilitating dialog between the parties. Romanian Law no. 192/2006 on mediation and organization of the profession of mediator should be amended in such a way that the court can be convinced that an authorized mediator will take all steps and address any kind of mediation that it considers appropriate to the dispute in question.

The siheation in the legislation of the Republic of Moldova

The Moldovan legislature, by means of the new mediation Law, Law no. 137/2015 on mediation, in my opinion, avoided the failure to force the authorized mediator to limit itself only to the role of facilitator of the mediation process.

According to the universal law principle valid *"where the law does not distinguish, nor should the interpreter distinguish"* – ***ubi lex non distinguit, nec nos distinquere debemus***, which suggests that *"a general wording of the legal text must correspond to its general application, without recourse to any distinctions that the law does not provide*"[13, p. 206], we infer that the new mediation Law, No 137/2015 suggested that authorized mediators in the Republic of Moldova could address all types of mediation. If this was indeed the intention of the Moldovan legislator, then this would be a bold approach to the mediation process, superior to many European States, including Romania.

For edification, I will briefly present the mediation styles that a mediator can approach, as it is claimed that the failure of mediation in Romania and the Republic of Moldova is also due to the fact that stakeholders sometimes want a more active involvement of the person they turn to settlement of their dispute. Therefore, mediation styles, also called types or forms of mediation [4, p. 118], have been the subject of controversy in the literature. Most authors [14, p.142] consider that there are four essential types of mediation: facilitative or facilitating mediation, transformative or transformational mediation, evaluative mediation and narrative mediation. Other authors [4, p.118] consider that there are three essential types of mediation: facilitative mediation, transformative mediation and evaluative mediation.

Since there are many opinions on the classifications of mediation styles, we will limit ourselves to detailing only the three essential types of mediation: easy mediation, evaluative mediation and narrative mediation.

There is no sense to bring the shortcomings of the facilitated mediation style back into discussion, as they have proved their practical uselessness, so I recommend that Moldovan mediators also specialize in addressing other mediation styles: transformative mediation and evaluative mediation.

Transformative or transformational mediation is a process by which the mediator helps the parties to change the quality of the interaction between them from a negative-destructive to a positive-constructive one, thus generating a transformation and a regeneration of the human interaction between the parties. This style of mediation does not ignore the significance of resolving certain issues, but it is assumed that if the mediator fulfills its role of helping the parties to interact in a positive way, by encouraging their ability to deliberate, communicate and make decisions, the parties will change in a positive way, and the result will be that they will find acceptable solutions to the final settlement of the conflict. We can thus find that at the end of the process of transformative mediation the existing conflict is resolved, and the relations between the parties will be not only restored, but also consolidated [8, p.58-60]. *Evaluative mediation* is considered the best approach to the mediation process. The mediator's performance is substantially close to the role of the judge in a dispute settled by the state court. The mediator has an active role in analyzing the conflict and what is needed to resolve it [7, p.73-74]. Focusing on the substance of the conflict, the mediator, in the analytical process, seeks to find solutions so that the conflict can be resolved.

According to L.L. Riskin [2], conflict assessment involves at least three activities: assessing the strengths and weaknesses of the parties; developing and proposing options for solving the case; predicting the outcome of the dispute before the court, and not in mediation. Although evaluative mediation requires that the mediator also have legal knowledge, the literature notes that there are many directions in which the mediator can go to understand, analyze, and share a particular opinion with the parties [7, p.80- 84].

Thus, the mediator can focus on the negotiation between the parties by making an objective and structured assessment of the negotiation. In this direction, the mediator can assess the dynamics between the parties, their movement towards the adoption of a negotiated agreement, can identify the obstacles to the success of the negotiation and can appreciate and analyze the contribution and progress of the parties to the negotiation.

Another direction that can be chosen by the mediator is to focus on the behavior of the parties, both during and outside the negotiations. From this position, the mediator can ascertain and analyze those actions or behaviors necessary to conclude or not conclude an agreement, but the mediator will focus only on those ac-

tions and attitudes that can have a positive impact on a successful mediation. The mediator can then focus on assessing the parties' priorities and the solutions they propose for resolving the conflict [7, 80-84].

The mediator's assessment may also focus on the priorities or plans proposed by the parties as solutions to the dispute, but it is difficult to know what the parties' priorities would be, and the plans proposed by the parties may be inapplicable or unfair.

Therefore, only a knowledgeable and experienced mediator could identify and analyze a certain plan, in a realistic and objective way, and not a subjective one such as the temptation of the parties to impose it. Moreover, the mediator's assessment may focus on alternatives other than those negotiated. If the alternative is more attractive than the mediated agreement, the mediator must recommend and encourage the proposed agreement and analyze the dangers that would have arisen from accepting the agreement, in the proposed terms.

Narrative mediation involves elements of a psychological nature in the performance of the mediator, which in the narrative mediation process begins to resolve the conflict with each party's narration over the issue under mediation. The mediator will listen with the patience of a psychologist the version of each side on conflict, feelings, needs and interests. On the basis of all these points raised by the parties, the mediator synthesizes and creates a new story that is accepted by both sides and which is likely to provide the basis for resolving the conflict [9, p. 179-198; 4, p. 47-48].

Opinions have been formed in the literature that mediation is not effective under all conditions. Successful mediation cannot take place if the two negotiators have an affected relationship or if the conflict under mediation is of high severity.

As for conflicts of moral or religious values and principles, they are more difficult to mediate than those of needs or interests [1, p.182].

The mediator can focus on either an element of the dispute such as the content or the relationship, or focus on both [1, pp.122-123].

Some authors are of the opinion that the essence of the mediation mission consists in arranging or rearranging the relationship between the parties and its gradual improvement [1, p.182]. Thus, *"in most conflicts between union and management, the third party does not have to be an expert on the subject. Interpersonal qualities and performance are what define the effective mediator, not academic titles*" [3, p.686].

Therefore, the Moldovan mediator can successfully approach one of these styles of mediation and can also use the newest regulation of the European Parliament [23] regarding mediation - SAL Directive (Alternative Dispute Resolution) and SOL Regulation (Online Disputes Resolution) - which emerged as a result of proposals made by the European Commission in 2011 with a view to improving the functioning of the internal retail market and, in particular, to strengthening consumer redress. The Directive and Regulation were adopted by the European Parliament on March 12, 2013 and following be transposed into the national law of the Member States within 2 years of its publication.

The directive guarantees European consumers the opportunity to resolve their disputes in the shortest possible time, at the lowest possible cost, thus providing an alternative to traditional judicial methods. Cross-border disputes are an important part of existing disputes between consumers and traders, and therefore uniform, coherent regulation was needed at European level. The use of alternative dispute resolution methods is also beneficial for traders, who thus avoid the publicity associated with a dispute in court and the costs of the whole process, in case the consumer wins the dispute.

SOL entities are providers of alternative dispute resolution services, which involve the

existence of a third party (arbitrator, mediator, Ombudsman and / or Board of Appeal, excluding direct negotiations between the parties), who proposes or imposes a solution or brings the parties together to help them find a solution. As for the SOL entities, these are those entities that offer services entirely online.

An online platform has been set up in the European Union to provide consumers with access to information on SOL service providers, divide by area of activity.

In particular, the victim through the online purchase of a product or service will be able to lodge a complaint through this platform. The complaint will also be communicated to the trader through this platform. Once the trader and the consumer have reached an agreement on the entity that will resolve the conflict between them, the SAL entity will be notified and the applicable procedure will then be the one specific to that alternative dispute resolution method. In practice, the online platform acts as an element of the intermediation of communications between consumers, professionals and SAL entities or SOL invested by the parties in dispute resolution.

Given the extremely high number of internet users in the European countries, with the transposition of this directive, direct mediation and mediation between distant people can be widely used. This opportunity can also benefit Moldovan and Romanian mediators, especially since mediation legislation also allows the execution of mediations online.

Conclusions

I believe that in Romania the commercial legislation should be amended in such a way as to make it more flexible and predictable. This would make a decisive contribution to decongesting the courts from the multitude of pending cases.

The litigants would not have to wait for years for a solution given by the court, during which time, even if they won, their business would be ruined. It is therefore necessary, in advance, that professional litigants should be able or required by law to seek an amicable settlement of their dispute. At the same time, the law on mediation must be amended, in the sense that authorized mediators in commercial disputes can address any style of mediation, and the agreement signed and sealed by them can be enforceable. Mediators authorized in commercial disputes should be registered in a special register on the website of the Ministry of Justice and the Mediation Council.

For the Republic of Moldova, given that there will be a body of mediators authorized in commercial disputes by the Mediation Council and approved by the Ministry of Justice, I consider that the introduction of the obligation of judicial mediation by Law no. 31/2017 for the completion of the Code of Civil Procedure of the Republic of Moldova no. 225/2003 [20], and by which, according to the provisions of art. 182 ^ 1, 182 ^ 2, 182 ^ 3,182 ^ 4 and 182 ^ 5, the court determines the scope of compulsory judicial mediation, sets the date, informs the parties about the law applicable to the dispute, the length of the proceedings, possible costs, possible settlement of the case and its effects for the parties to the proceedings, and the duration of the entire proceedings shall not exceed 45 days. However, most legal professionals [12, pp. 233-244], who consider that this law cannot be in accordance with the European standards to which the Republic of Moldova aspires, have expressed their critical opinion towards this unique legal institution. Although the exception of unconstitutionality of art. 182 ^ 1, 182 ^ 2, 182 ^ 3,182 ^ 4 and 182 ^ 5 of the Code of Civil Procedure was based on the same recital invoked in Romania in the Decision of the Constitutional Court no. 266/2004, i.e. the fact that “the obligation of judicial mediation is contrary to the right to a fair trial guaranteed by article 20 of the Constitution of the Republic of Moldova “, the

Moldovan Constitutional Court rejected the exception invoked on this recital and noted that the objectives of the judicial mediation procedure are the faster settlement of certain categories of disputes, the decongestion of the courts and the avoidance of court costs. objectives of costs. Thus, the Court found that these objectives can be subsumed under the general legitimate aim of public policy provided by Article 54 paragraph (2) of the Constitution. "

In an opinion [12, p.233-244], regarding this Decision of the Court, the author Svetlana Slusarenco in the article "Mediation in the Republic of Moldova - reality and trends" remarks that although the Constitutional Court of the Republic of Moldova found that judicial mediation does not infringe the right to a fair trial within a reasonable time, however, with regard to the direct involvement of judges in the functioning of the mediation institution, the Advisory Council of European Judges, an advisory body to the Council of Europe, adopted Opinion no. 6 (2004) on fair and reasonable trial and the role of judges in trials given alternative means of resolving disputes [16]. The conclusions of this document are as follows:

Recourse to mediation in civil and administrative proceedings may be made at the initiative of the parties or, alternatively, the judge should be allowed to recommend it;

- the parties must be allowed to refuse recourse to mediation;

- the refusal must not infringe the right of the party to obtain a court decision in his case".

Alongside this opinion, I would add that judges around the world have a professional profile dictated by international standards such as the "Bangalore Standards of Judicial Conduct [5]" and cannot play theater to provoke and take advantage of emotions in judicial mediation in order to play the role of mediator, and then to resume the sober attitude of a judge, all the more so as there is no uniform and predictable judicial practice. Furthermore, I believe that an authorized mediator in commercial litigation that would address the evaluative mediation style would achieve the same results, perhaps even more promising, than in the case of judicial mediation, provided that the agreement signed and initialed by the mediator has enforceable effect. The only condition in the elaboration of the future normative act should be only in the observance of the principle of the unity of the system of law [10, p.189].

In this case, the Court's reasoning regarding the "objectives of the judicial mediation procedure", respectively, "the faster settlement of certain categories of disputes, the decongestion of the courts and the avoidance of court costs", no longer subsists.

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CZU 349.6(478)
DOI https://doi.org/10.52388/2345-1971.2021.e1.08

LEGAL REGIME FOR WASTE MANAGEMENT IN THE REPUBLIC OF MOLDOVA

Andrian CRETU
Doctor of Law, University of European Political and Economic Studies „Constantin Stere”, Chisinau, Republic of Moldova
e-mail: *andrian.cretu@gmail.com*
https://orcid.org/0000-0002-8144-5233

This article contains a study in the field of interaction and dependence of constitutional guarantees of Human Rights in the Republic of Moldova on power, economy and capital. The author analyzes the set of meanings and forms of this democracy, the measure, level and values of citizens who make up a collective or a lot of people, from the point of view of the means and methods of applying democratic principles through the prism of citizens ' involvement in the leadership of the state. The interaction and direct dependence of the implementation of constitutional norms by the political will, the level of the economy, including the interest and purpose of the dictatorship of capital, is subject to analysis. The real problem of Western-type democracy with regard to the expectations of citizens is also analyzed. The article also provides an assessment of democratic values in their current form and content. The most common and independent opinions, ideas and doctrines are analyzed. Similarly, an analysis is carried out from the general ideological point of view and the achievement of objective effects, including the subsequent occurrence of certain consequences. A comparative analysis is made on the opinions of other famous specialists in this field.
Keywords: *waste, recycling, natural resources, extended responsibility, environmental authorities.*

REGIMUL JURIDIC AL GESTIONĂRII DEŞEURILOR ÎN REPUBLICA MOLDOVA

Creșterea demografică, mai ales cea înregistrată în ultimele decenii, nu avea cum să nu aducă cu sine și un șir de probleme, în special, cele legate de mediu. Or, odată cu aceasta crește volumul consumului, iar pe cale de consecință și a deșeurilor de pe urma consumului de produse și servicii. Mai mult, resursele epuizabile devin cele mai vulnerabile, imposibil de compensat chiar și pe calea reciclării deșeurilor rezultate din utilizarea produselor, iar acestea, la rândul lor, din utilizarea materiei prime care, în linii mari, constituie resurse naturale epuizabile. Considerentele arătate, în mod normal, au determinat legiuitorii statelor dezvoltate să recurgă la măsuri mult mai precise, directe și eficiente pe segmentul regimului juridic al gestionării deșeurilor de orice fel. Așa s-a făcut, ca în ultimul deceniu, legislația europeană să cunoască noi mecanisme și concepte ce au drept obiectiv reducerea deșeurilor și gestionarea eficientă a celor existente. Unul din acestea ar fi de menționat sistemul economii circulare care emană în diverse alte mecanisme strategice ajutătoare cum ar fi: ecodesignul; ecomarketingul; responsabilitatea extinsă a producătorului; urmărirea ciclului de viață a produsului; achizițiile ecologice; raportarea informației despre măsurile aplicate în vederea reducerii impactului negativ asupra mediului și altele, unele din ele, recent, fiind preluate și implementate și în Republica Moldova - țară cu mari aspirații orientate în direcția integrării europene.
Cuvinte-cheie: *deșeuri, reciclare, resurse naturale, responsabilitate extinsă, autorități de mediu.*

RÉGIME JURIDIQUE DE LA GESTION DES DÉCHETS EN RÉPUBLIQUE DE MOLDOVA

Cet article contient une étude dans le domaine de l'interaction et de la dépendance des garanties constitutionnelles des Droits de l'Homme en République de Moldova vis-à-vis du pouvoir, de l'économie et du capital. L'auteur analyse l'ensemble des significations et des formes de cette démocratie, la mesure, le niveau et les valeurs des citoyens qui composent un collectif ou beaucoup de personnes, du point

de vue des moyens et des méthodes d'application des principes démocratiques à travers le prisme de l'implication des citoyens dans la direction de l'État. L'interaction et la dépendance directe de la mise en œuvre des normes constitutionnelles par la volonté politique, le niveau de l'économie, y compris l'intérêt et le but de la dictature du capital, sont sujets à analyse. Le véritable problème de la démocratie de type occidental en ce qui concerne les attentes des citoyens est également analysé. L'article fournit également une évaluation des valeurs démocratiques dans leur forme et leur contenu actuels. Les opinions, idées et doctrines les plus courantes et les plus indépendantes sont analysées. De même, une analyse est effectuée du point de vue idéologique général et de la réalisation d'effets objectifs, y compris l'apparition ultérieure de certaines conséquences. Une analyse comparative est faite sur les opinions d'autres spécialistes célèbres dans ce domaine.

Mots-clés: *déchets, recyclage, ressources naturelles, responsabilité élargie, autorités environnementales.*

ПРАВОВОЙ РЕЖИМ МЕНЕДЖМЕНТА ОТХОДОВ В РЕСПУБЛИКЕ МОЛДОВА

Демографический рост, особенно в последние десятилетия, не мог не повлечь за собой ряд проблем, особенно связанных с окружающей средой. В то же время, увеличивается объем потребления, следовательно, и отходы от потребления продуктов и услуг. Более того, истощаемые ресурсы становятся наиболее уязвимыми, и их невозможно компенсировать даже за счет переработки отходов, возникающих в результате использования продуктов, а это, в свою очередь, из-за использования сырья, которое, как правило, является истощаемым природным ресурсом. Вышеупомянутые соображения обычно побуждали законодателей развитых стран прибегать к гораздо более точным, прямым и эффективным мерам в сегменте правового режима обращения с отходами любого рода. Таким образом, в последнее десятилетие европейское законодательство узнало о новых механизмах и концепциях, направленных на сокращение отходов и эффективное управление существующими отходами. Один из них следует упомянуть – речь идет о системе циркулярной экономики, которая проявляется в различных других полезных стратегических механизмах, таких как: экодизайн; экомаркетинг; расширенная ответственность производителя; отслеживание жизненного цикла продукта; зеленые закупки; обнародование информации о мерах, принятых для снижения негативного воздействия на окружающую среду, и других, некоторые из которых недавно были приняты и реализованы в Республике Молдова - стране с высокими стремлениями к европейской интеграции.

Ключевые слова: *отходы, переработка, природные ресурсы, расширенная ответственность, природоохранные органы.*

Introduction

Industrial and technological development in recent years has led to an unprecedented increase in the level of production, processing and distribution of goods but, unfortunately, no progress has been made in the development of the resulting waste management techniques. Moreover, the gradual adoption of a strict regulatory framework on waste management has led to the emergence of a large-scale waste market, around which coexist, in a more or less disguised way, a number of economic interests.

The problem of waste management in the Republic of Moldova remains a rather difficult and unresolved issue “both from an organizational and legislative point of view”. Although the field of environmental protection is regulated by a series of legislative and normative acts, the legal aspect of waste management leaves much to be desired, being necessary both the restructuring of the legal and institutional framework and the creation of an integrated system of technical and ecological regulation, selective collection for recycling, recovery, disposal and storage of waste. However, according to some data, the generation of waste fluctuates annually, and the amount of waste used and buried is increasing.

Currently, the most widely used method of treating household waste is landfilling, which is often an important source of soil and groundwater pollution.

In this context, local sanitation and urban waste management are an important objective of government and local structures. Annually, through the sanitation services in the urban localities, about 1144-2210 thousand m^3 of waste are transported to DMS landfills (household waste dumps). The best solution in this case would be to process the waste either by some economic agents or by some state and municipal enterprises, which is not done. Because of this, the population's dissatisfaction is growing with the discomfort created by storing them on the ground near the localities.

Although there are several waste processing companies in the Republic of Moldova, the information on the volumes of recycled waste is not subject to statistical evidence.

In 2008, a total amount of 2841.7 thousand tons of waste was generated from the activity of enterprises. Most of them, about 1570 thousand tons, are waste related to the food and beverage industry, another 540 thousand tons are waste from extraction companies, 249 thousand tons come from growth.

Of the production waste, only 30% was used, 50% is disposed of in landfills and 20% remains in stock on the territory of enterprises.

Consequently, improper waste management in recent years has affected local communities, threatened the environment and contributed to global greenhouse gas emissions [8, p.182], which are quite dangerous and aggressively threatening the health of the population in the area.

Regarding the regulations in the field of waste management, the Republic of Moldova encounters some difficulties of their application, although the legislation is partially adapted to the European legislative framework, there are still not enough resources and qualified subjects in the correct management of waste, and in general, there is no mechanism. clear about it. However, although the new law on waste [3] provides for the extended producer responsibility mechanism, it does not provide for a consumer liability - the largest generator of household waste. Also, the extended liability mechanism of the manufacturer, although it has known regulations since 2016, currently (2021) is not yet functional.

The purpose of the article is to raise awareness of the producer, consumer, trader and all other waste-generating subjects of any kind about the danger of waste to the environment and, consequently, to human life and health. Furthermore, the study aims to identify and suggest to the legislator solutions to improve the regulatory framework supporting Law No 209/2016 which would provide support for the full implementation of the mechanism of extended producer responsibility as an economic and financial mechanism for environmental protection. Moreover, this work intends to offer separate material, suggestions and patchwork to the legal frame of doctrine, which is so necessary for generations of researchers concerned with environmental protection.

Methods and materials applied. In preparing this work, we have used a wide range of scientific research methods, including: historical method, method of analysis, syntheses method, method of deduction, systemic method, empirical method, experimental method, interpretive method. At the basis of the work we also have the materials written by us in the preparation of other works, materials of the foreign and domestic authors dedicated to the field of environmental protection, among which we mention I. Trofimov, G. Ardelean, P. Zamfir, R. Iordanov. A. Rotaru, V. Ashevschi, A. Capcelea, Gh. Duca and other outstanding authors.

Results obtained and discussions

In the context of increasing the volume and diversity of generated waste, its management

and recycling becomes a local, national and international priority [5, p.11]. This is due to certain considerations and factors that have led to poor waste management, both in urban and rural areas.

Thus, urbanization also influences the generation of waste, and the inhabitants of urban areas produce much more waste than those in rural areas. In many rural settlements the sanitation service is insufficiently functioning, and in some there is no such service, therefore a quantity of waste remains in the localities.

At the same time, the creation of sanitation services for rural localities will require expenses and time, but the waste problem cannot be neglected.

A perspective to solve this problem would be the organization of the final disposal and storage of waste, or even the transition to the method of controlled storage, which is done in suitable spaces with actions to prevent environmental pollution, favorable conditions for fermentation, without breeding insects and rodents with according to sanitary requirements.

Regulations on the legal regime for the management of production and household waste

Accelerated urbanization has led to an impressive increase in the amount of waste, and the development of science and economics has also generated a number of problems related to the great diversity of new materials used in various fields. The benefits of modern technology - undeniable, on the one hand - are “burdened” by manufacturing processes that involve special aspects related to the ecological management of waste resulting from the development and use of new types of packaging. One of the great difficulties associated with modern product packaging and preservation systems is associated with these new types of materials (hence new types of waste that can be recycled): plastics [6, p.88], for example.

In order to meet these “challenges”, specialists focused on establishing a global waste management system, thus emerging a new area of interest - solid waste management [6].

According to the older regulations in the field [4], ***waste*** is a substance, material, object, residue of raw materials from economic, household and consumer activities, which has lost, in whole or in part, its original value for use, some of which are reusable after processing. The current law, in terms of defining the notion of waste, becomes more incomplete, stating that any substance or object that the owner throws away or has the intention or obligation to throw away is waste. We see, therefore, that waste is considered not only the dumped material substances, but also those that are to be dumped or must be dumped (stored).

For the purposes of the new law, ***waste management*** means - the collection, transport, recovery and disposal of waste, including the supervision of such operations and the subsequent maintenance of landfills, including the actions of a trader or broker.

In the same direction, the legal regime of waste management refers to the elaboration and implementation of the rules underlying any activity related to the formation, treatment, packaging, storage, transportation, accumulation, neutralization, processing, use, burial or waste destruction.

These being defined, it should also be noted that the effective functionality of the regulatory legal framework, according to tactics and rules, increases in the context in which it is based on a judicious division of all the compartments that make it up.

In this regard, the legislator has regulated the legal regime of waste management taking into account the following compartments:

➢ competence of central and local public administration authorities;

➢ general waste management requirements;

- ➢ authorization, control, record keeping and information system in the field of waste management activities;
- ➢ obligations in the field of waste management;
- ➢ requirements for the management of certain categories of waste import and export of waste;
- ➢ liability for breach of waste legislation.

Competence of central and local public administration authorities

In order to ensure the efficiency of activities in the field of waste management, the legislation in force empowers a number of bodies with both specialized and general competence.

However, given the complexity of the field, a strict delimitation of the competencies of each subject invested with responsibilities in ensuring the safe use of production and household products and waste was also necessary.

Thus, in order to carry out its duties, *the Government of the Republic of Moldova* has the following distinct competencies:

a) achieves objectives and sets priority directions in the field of waste management;

b) approves the National Waste Management Strategy and the National Waste Management Program;

c) approves the normative acts in the field of waste management to ensure the implementation of this law, including the methodology for calculating the tariffs in this field;

d) determines the management of certain categories of waste, including hazardous waste, in accordance with the provisions of this law and international law;

e) if the local public administration authorities do not give their consent within 3 months of their notification, they shall take final decisions on the location of regional objects of national importance concerning the recovery, treatment, recycling, disposal, storage or burial of waste, provided that environmental requirements, according to the Law of expropriation for a cause of public utility no. 488-XIV of July 8, 1999, and other social requirements.

The central authority, empowered with the management of natural resources and with the protection of the environment - ***the Ministry of Agriculture, Regional Development and Environment***, has the following attributions:

a) elaborates, prepares for approval and coordinates the realization of the policy documents provided in article 8 letter b) and the implementation of international treaties to which the Republic of Moldova is a party;

b) initiates and ensures the elaboration, promotion for approval and coordination of the accomplishment of the legislative acts and normative acts of the Government in the field of waste management;

c) methodologically directs the organization of the environmental impact assessment of the strategic environmental evaluation and the state ecological expertise;

d) ensures the monitoring, through subordinated administrative authorities, of the impact on environmental factors caused by waste and deduces waste management indicators;

e) constitutes, through the subordinate administrative authority, the liaison for communication and cooperation with the European Environment Agency on waste legislation and management indicators;

f) is the competent authority, official point of contact and focal point for international environmental treaties on waste management to which the Republic of Moldova is a party;

g) coordinates the process of establishing economic instruments to reduce the negative effects of waste on the environment, including the process of drawing up, operating and issuing the decision to issue the financial guarantee established to cover the costs of financing collection, treatment, recovery and disposal waste products subject to an extended producer responsibility regime;

h) examines and approves the annual action plans of subordinated administrative authorities for the supervision and control of waste management, and monitors their implementation;

i) presents and provides the Government with information on the implementation of the policy documents mentioned in letter a) and information on waste management and the state of the environment in relation to waste management;

j) contributes to the collection and dissemination of information on waste generation and measures for their management, including in a cross-border context, and ensures public access to information in accordance with the provisions of article 38;

k) organizes, together with other public authorities and non-governmental organizations, training and education programs for the population in the field of waste management;

l) ensures administrative cooperation and exchange of information with other states and international organizations in the field of waste management, as well as reporting in international environmental treaties on waste management to which the Republic of Moldova is a party according to the reporting and communication procedures established therein;

m) is the owner of the Automated Information System «Waste Management» (hereinafter referred to as - SIA MD), mentioned in article 33 and ensures the legal, organizational and financial conditions for its creation.

Decisions taken, within the limits of its competence, by the central authority responsible for the management of natural resources and the protection of the environment in the field of waste management shall be enforceable for all economic operators and may be challenged in the competent administrative court.

A number of authorities under the central environmental authority are entrusted with competence in the field of waste management, such as:

✓ *The Environmental Agency, with the following tasks:*

a) participates in the promotion of state policy in the field of waste management;

b) ensures the implementation of the integrated waste management system

c) participates in the development and implementation of waste management strategies and special programs for the prevention and prediction of waste formation and for the control and clearance of outbreaks of hazardous waste stocks;

d) participates in the drafting and endorsement of draft legislative acts on waste management;

e) participates in the implementation of international treaties and agreements relating to the management of waste and its cross-border transport;

f) cooperates, within the limits of their competence, on waste management issues, with the authorities of central and local public administration, with the Academy of Sciences of Moldova, with scientific research institutions, educational institutions and public profile associations, with other legal entities governed by public or private law, as well as with natural persons;

g) organizes, within the limits of its competence, seminars, conferences at national and regional level, training of staff, economic agents and informing the public on issues related to waste management;

h) examines the environmental impact assessment documentation and issues the environmental agreement for public and private projects, including planned waste management activities;

i) performs state environmental expertise of draft policy documents, waste management regulations and project documentation and planning for construction or reconstruction of enterprises and other waste-generating objects, as well as for objects related to waste management infrastructure;

j) ensures the release, suspension, extension or withdrawal, according to article 25, of the environmental permit for waste management, including for the endowment and permanent availability of port facilities;

k) issues notification documents for the transboundary transport of waste, according to the normative acts approved by the Government;

l) ensures the establishment of separate collection and recycling targets for waste products subject to extended producer responsibility regulations, in accordance with this law and regulations approved by the Government;

m) is the owner of SIA MD and ensures its maintenance.

✓ *Inspectorate for Environmental Protection, with the following responsibilities:*

a) exercises state control and supervision of waste management, including waste products subject to extended producer responsibility regulations, exercises control in the fields of economic activity over compliance with the provisions of this law and regulations by institutions, organizations, economic agents, regardless of the type of property and the legal form of organization, and by individuals, including foreigners;

b) exercises state control over compliance by institutions, organizations and economic operators with waste storage limits, separate collection and recycling targets for various waste streams and waste products subject to extended producer responsibility regulations;

c) keeps records and conducts inventories with economic agents, institutions and organizations regarding the formation, recovery and disposal of waste, as well as the stocks of waste stored;

d) suspends, totally or partially, according to the procedure provided by Law no. 131/2012 on state control over entrepreneurial activity, the activity of economic agents in case of detection of very serious violations of the regulations on waste management, if they can lead to environmental pollution;

e) ascertains and examines contraventions and applies sanctions according to the Contravention Code of the Republic of Moldova no. 218-XVI of October 24, 2008 and submits actions for the recovery of the damage caused to the environment as a result of the violation of the provisions of the legislative and normative acts within the activity.

Also, under the new law on waste, ***the local public administration authorities*** are also given clear responsibilities.

Therefore, in order to implement the legislation in the field of waste management, the local public administration authorities, within the limits of the financial resources approved for this purpose by the local council for the respective budget year, carry out the following activities:

a) the creation of an efficient system of collection, staged assurance of the conditions for separate collection and transportation of waste and the establishment of its operation, in accordance with the provisions of this law and other normative acts;

b) the allocation of land necessary for the separate collection of waste, including the collection of waste products subject to the extended liability regulations of the producer, their endowment with containers specific to the types of waste, as well as their functionality;

c) arranging special spaces for the storage of separately collected waste, properly sized, in order to ensure the protection of the environment and the health of the population;

d) storage of municipal waste only in places specially arranged in accordance with urban planning documentation;

e) record of data and information on waste and municipal waste collection gathered from the population, from commercial units and institutions, on a contract basis, reporting these data annually, through municipal waste management operators, Ministry of Agriculture, Regional Development and Environment with the methodology of keeping records and

transmitting information, approved by the Government.

Also, the local public administration authorities contribute, within the limits of the competences established by this law, to the establishment of an integrated waste management system at regional level and ensure the regional cooperation in order to set up the regional waste management associations.

As mentioned at the beginning, a novelty in the field of waste regulation is the institution of extended producer responsibility based on the European concept of the circular economy, where the producer has the obligation to follow the entire life cycle of the product, causing his product to return as waste.

In this sense, according to article 12 of Law no. 209/2016 in order to strengthen the reuse and prevention, recycling and other types of waste recovery, natural or legal persons (product manufacturer) who, at the professional level, design, produce, process, treat, sell and / or import the products referred to in paragraph . (14) are subject to the extended manufacturer's liability regime.

The extended liability of the manufacturer is the totality of the obligations imposed on the producers, either individually or collectively, for the recovery or recycling of end-of-life products. The activities for the application of the extended liability of the producer shall include measures for the acceptance of returned products and waste remaining after the use of those products, as well as the subsequent management of waste and financial insurance for these activities.

Activities for the application of extended producer responsibility must be accompanied by the necessary measures to encourage both the environmentally design and production of goods and the use of components and materials which have a low impact on the environment and which generate a low amount of waste during production and subsequent use, as well as to ensure that the recovery and disposal of products that have become waste is carried out in accordance with the provisions of articles 3 and 4. The presence of dangerous substances in the products mentioned in paragraph (14), which are primarily subject to extended liability regulations such as mercury, cadmium, lead, hexavalent chromium, polybrominated biphenyls, polybrominated diphenyl ethers and ozone-depleting substances, including hydrochlorofluorocarbons, are governed by this act, and normative acts regarding the management of these products, approved by the Government. Those measures should encourage the development, production and marketing of multi-use products which are technically sustainable and which, once they have become waste, can be safely recovered and disposed of in an environmentally sound manner.

Also a novelty for the regulation of the waste regime is the automated information system "Waste Management". Thus, pursuant to law no. 209/2016, article 33, units and enterprises involved in waste management activities, including waste producers, participate in the process of reporting data and information on waste and its management according to the requirements of the law and the provisions of the Automated Information System "Waste Management" (SIA MD), approved by the Government. SIA MD represents all software products and technical equipment for the collection, storage and processing of information, forming the information resource Register "Waste Management", which will include events related to their economic circuit, documents accompanying this circuit, including export and import of waste, waste producers and economic agents authorized to work in this field, as well as the automation of business processes of waste circuit subjects and the provision of information on the waste circuit to public authorities, individuals and legal entities through the departmental portal.

The information regarding the implementation of the measures related to the appli-

cation of the extended responsibility of the manufacturer for the products mentioned in article 12 and the data on the quantity of products made available on the market, specified in tonnes and number of units, as well as information on the quantity, number and categories of waste collected and treated are part of SIA MD.

Conclusions

From the analysis of the content of the new law on waste, we find that it is in line with the provisions of our legislation with that of the European Union on the segment of waste management, based on the concept of circular economy which long ago showed its efficiency internationally . However, we still have many reservations about the implementation, but also the development of legislation related to waste management, as well as environmental legislation as a whole, which would strive to reduce the amount of waste, and existing waste to be processed and reused as soon as possible. as far as possible without adverse effects on the environment and, consequently, on human health and quality of life.

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CZU 349.6:351.77
DOI https://doi.org/10.52388/2345-1971.2021.e1.09

THE LEGALITY OF THE „SHARE" IN THE BILLING OF THE PUBLIC WATER SUPPLY AND SEWAGE SERVICE

Liliana BELECCIU
Doctor of Law, Associate Professor, Academy „Ştefan cel Mare" of the Ministry of Internal Affair, Chisinau, Republic of Moldova
email: *lilianabelecciu@yahoo.com*
https://orcid.org/0000-0003-4134-6983

The public water supply and sewerage service includes the totality of activities of public utility and general economic and social interest carried out for the purpose of the collection, treatment, transportation, storage and distribution of drinking water on the territory of the administrative-territorial unit, as well as for the purpose of the collection and purification of wastewater. This service is regulated, in particular, by the Law on public water supply and sewerage service No. 303/2013. The object of the law represents the creation of the legal framework for the establishment, organization, operation, regulation and monitoring of the public drinking water supply and sewerage service in the conditions of accessibility, availability, reliability, continuity, competitiveness, transparency, respecting quality, safety and environmental protection. Everything that exceeds these activities is not subject to the regulation of the Law No. 303/2013. And the application of the "share" is an illegal activity that is punishable in accordance with the legislation in force.
Keywords: *public service, water, sewerage, share, environmental protection.*

LEGALITATEA «COTEI-PĂRŢI» ÎN FACTURAREA SERVICIULUI PUBLIC DE ALIMENTARE CU APĂ ŞI DE CANALIZARE

Serviciul public de alimentare cu apă și de canalizare este un serviciu vital pentru populaţie (atât pentru persoanele fizice, cât şi cele juridice). Acesta cuprinde totalitatea activităţilor de utilitate publică şi de interes economic şi social general efectuate în scopul captării, tratării, transportului, înmagazinării şi distribuirii apei potabile pe teritoriul unităţii administrativ-teritoriale, precum şi în scopul colectării şi epurării apelor uzate. Serviciul este reglementat, în special, de Legea privind serviciul public de alimentare cu apă şi de canalizare nr. 303/2013. Obiectul legii reprezintă crearea cadrului legal pentru înfiinţarea, organizarea, funcționarea, reglementarea şi monitorizarea serviciului public de alimentare cu apă potabilă şi de canalizare în condiţii de accesibilitate, disponibilitate, fiabilitate, continuitate, competitivitate, transparență, cu respectarea normelor de calitate, de securitate şi de protecţie a mediului. Tot ce excede acestor activităţi, nu face obiectul de reglementare a Legii nr. 303/2013. Iar aplicarea "cotei părţi" este o activitate ilegală care se pedepseşte în conformitate cu legislaţia în vigoare.
Cuvinte-cheie: *serviciu public, apă, canalizare, cotă-parte, protecţia mediului.*

LA LÉGALITÉ DE LA «QUOTE-PART» DANS LA FACTURATION DU SERVICE PUBLIC D'EAU ET D'ASSAINISSEMENT

Le service public d'approvisionnement en eau et d'assainissement comprend toutes les activités d'utilité publique et d'intérêt économique et sociale générale effectuées aux fins de captage, de traitement, de transport, de stockage et de distribution de l'eau potable sur le territoire de l'unité administrative-territoriale, ainsi qu'aux fins de collecte et de l'épuration des eaux usées. Ce service est réglementé, notamment, par la Loi sur le service public d'approvisionnement en eau et d'assainissement nº303/2013. L'objet de la Loi est la création du cadre juridique pour l'établissement, l'organisation, le fonctionnement, la réglementation et la surveillance du service public d'approvisionnement en eau potable et d'assainissement

dans des conditions d'accessibilité, de disponibilité, de fiabilité, de continuité, de compétitivité, de transparence, en respectant les normes de qualité, de sécurité et de protection de l'environnement.Tout ce qui dépasse ces activités n'est pas soumis à la réglementation de la Loi n°303/2013. Et l'application de la «quote-part» est une activité illégale qui est punissable conformément à la législation en vigueur.

Mots-clés: *Service public, l'eau, l'assainissement, la quote-part, la protection de l'environnement.*

ЗАКОННОСТЬ «ДОЛИ» В СЧЕТАХ ОБЩЕСТВЕННОЙ УСЛУГИ ВОДОСНАБЖЕНИЯ И КАНАЛИЗАЦИИ

Служба общественного водоснабжения и канализации включает в себя все виды деятельности коммунального общеэкономического и социального значения, осуществляемые с целью сбора, обработки, транспортировки, хранения и распределения питьевой воды на территории административно-территориальной единицы, а также для сбора и очистки сточных вод. Данная услуга регламентируется, в частности, Законом №. 303/2013 о коммунальном водоснабжении и канализации. Целью закона является создание правовой основы для образования, организации, функционирования, регулирования и мониторинга коммунальных служб питьевого водоснабжения и канализации в условиях доступности, надежности, непрерывности, конкурентоспособности, прозрачности, соблюдения качества, безопасности и охраны окружающей среды. Все, что выходит за рамки перечисленных видов деятельности, не регламентируется Законом No. 303/2013. А применение «доли» - это незаконная деятельность, преследуемая согласно действующему законодательству.

Ключевые слова: *коммунальная служба, вода, канализация, доля, охрана окружающей среды.*

Introduction

Last amendment of the Law on the public water supply and sewerage service no. 303/2013 represented a revision and completion as innovative as it is necessary of the legal framework that regulates this sector. Thus, aspects regarding the national policy of regionalization of the water supply and sewerage service were reflected in the law; the legal regime of public water supply and sewerage systems; the royalty paid for the transfer of the right to use the goods of the public / private domain of the administrative-territorial unit; the tariff for the production and / or transportation of water for redistribution; Development fund etc.

By the same law, it was amended, including article 29 paragraph (2) of Law 303/2013, which regulates the invoicing of the public water supply and sewerage service in the residential blocks where the supply / service contracts are concluded by the operator with the administrator of the residential block.

The regulations regarding the distribution of the difference between the volume registered by the meter from the connection of the residential block and the sum of all the meters installed in the apartments, the so-called "share" was repealed. The distribution by apartments of the volume of water registered by the meter from the connection of the housing block will be made based on the Regulation on the provision of communal and non-communal services, use, operation and administration of housing, which will be approved by the Government.

The basis of this amendment is based on the object of regulation of Law no. 303/2013, namely the activity of supplying / providing the public water supply and sewerage service, through the public water supply and sewerage systems built on the public domain of the administrative-territorial unit, up to the property limit. Thus, the reports regarding the supplying / providing of the service on private property exceed the legal framework of Law no. 303/2013.

To the detriment of these changes, the municipal enterprises for the management of the housing fund continued to calculate and collect the "share" for the invoicing of the water

supply and sewerage service in the housing blocks[1].

This can be deduced from the number of petitions filed with the Agency for Consumer Protection and Market Surveillance. The Authority informed us that among the consumers' dissatisfactions regarding the supply / provision of the water supply and sewerage service, the most frequently reported refers to the «share». Consumers express their dissatisfaction with its payment, in the context of having metrologically verified water meters.

Scientific research methodology used. In the process of elaborating this study we used several methods of scientific research such as: general (or common) and special. It should be noted that most of the special problems of the natural sciences and even some stages of research require the use of special methods of solving. From the general methods of scientific research, we used:

1) empirical research methods (observation, comparison,);

2) methods used in both empirical and theoretical research (abstraction, analysis and synthesis, induction and deduction, modeling);

3) theoretical research methods (ascent from abstract to concrete).

Peculiarities of the public water supply and sewerage service

Coincidentally or not, in the fall of 2020, a group of deputies registered a draft law on amending the Law on the public water supply and sewerage service no. 303/2013 (legislative initiative no. 462 of November 24, 2020). According to the briefing note, the bill was drafted to improve the regulation of relations between the operator and the consumer of the public water supply and sewerage service. The substantiation shows that at present, the operators of the public water supply and sewerage service practice concluding the contract for the supply / provision of the public service with the administrators of the residential blocks, and the invoicing takes place based on the indices of the common meter installed at the block connection. All this in the conditions in which the final consumers have installed individual meters, metrologically verified according to the requirements provided by the Metrology Law no. 19/2016.

Although the final part of the briefing note states that the proposed amendments will ensure compliance with the rights of individual consumers and reduce abuses that may come from housing block administrators, the authors of the bill do not notice that these are private law relationships, regulated by other normative acts, by no means by Law no. 303/2013.

For a better understanding of the organization and operation of the public water supply and sewerage service, the right and obligation of the operator to supply / provide this vital service, below we will present the most important legal regulations established in the Law on service public water supply and sewerage no. 303/2013.

According to article 3 paragraph (1) of Law no. 303/2013, the public water supply and sewerage service includes all activities of public utility and general economic and social interest carried out for the purpose of capturing, treating, transporting, storing and distributing drinking or technological water to all consumers in the territory of one or several localities, as well as for the purpose of collecting, transporting, purifying and disposing of wastewater.

We mention that the public water supply and sewerage service is part of the sphere of public communal services organized at the level of administrative-territorial units, which aims to ensure water supply, sewerage and wastewater treatment for all consumers in the locality.

[1] See: https://anre.md/cota-parte-la-apa-este-ilegala-gestionarii-risca-sa-fie-sanctionati-pentru-exces-de-putere-sau-depasirea-atributiilor-de-serviciu-3-77

This public service has 2 components:

a) the public water supply service, representing all the activities necessary for: capturing raw water from surface or underground sources; raw water treatment; transportation of drinking and / or technological water; water storage; drinking and / or technological water distribution;

b) the public sewerage service, representing all the activities necessary for: collecting, transporting and disposing of wastewater from consumers to treatment plants; wastewater treatment and discharge of treated water into the emissary.

In the Republic of Moldova these 2 components of the public water supply and sewerage service are provided by a single operator (this is the case for over 80% of water-sewer operators). However, it is also possible to separate them, as there are *operators who will provide only the public water supply service* (for example: the Municipal Enterprise "Apa-canal Balti"; operators in communes and villages where only the water supply service is organized), *operators which will provide only the public sewerage service* (for example, LLC «GLORIN Engeneering» Balti), *operators that will provide only certain activities within these services* (for example, the State Enterprise «Acva-Nord» which ensures only the capture of raw water, drinking water treatment and transportation).

According to the constitutional principles[2] - local autonomy and decentralization of public services - the competence regarding the establishment of the public water supply and sewerage service belongs to the local public authorities. Thus, the deliberative authorities (local councils / city councils) of the administrative-territorial units have the exclusive competence regarding the establishment, organization, coordination, monitoring and control of the operation of public water supply and sewerage services, as well as the creation, administration and operation of public property from the technical-urban infrastructure of the administrative-territorial units related to this service.[3]

In case of finding urgent needs in providing this vital service at the level of the administrative-territorial unit, the local public authority will start the procedure regarding its establishment. In the organization, operation and development of the public water supply and sewerage service, the general interest of localities and citizens is a priority.

The public water supply and sewerage service is supplied / provided by the creation and operation of a specific technical-municipal infrastructure, called the public water supply and sewerage system. Only in the case of the existence / start of activities regarding the construction of these systems, the local public authority can set up the water supply and sewerage service.

[2] Constituția Republicii Moldova adoptată la 29.07.1994, publicată în Monitorul Oficial al Republicii Moldova nr. 1 din 12.08.1994.

[3] The main competencies of the local public authorities, established in article 8 paragraph (1) of Law no. 303 of 13.12.2013 are:

- approving the elaboration and implementation of own development and operation plans, in the short, medium and long term, of the public water supply and sewerage service in accordance with the general urban plans, with the socio-economic development programs of the administrative-territorial unit, as well as in accordance with international commitments in the field of environmental protection;
- establishment, organization, coordination, monitoring and control of the operation of the public water supply and sewerage service;
- approval of tariffs for the public drinking water supply and sewerage service and for ancillary services provided by operators to consumers, calculated in accordance with the methodologies developed and approved by the Agency;
- administration of the public water supply and sewerage system as part of the technical-municipal infrastructure of the respective administrative-territorial units;
- delegation of the management of the public water supply and sewerage service and of the corresponding public goods according to the legislation in force;
- contracting or guaranteeing, in accordance with the law, loans for financing investment programs in order to develop the public water supply and sewerage system of the localities, for carrying out new works or extensions, for capacity development, including for rehabilitation, modernization and re-equipment of existing systems;
- ensures the water supply, as well as the sewerage service in exceptional situations; and so on.

The public water supply and sewerage systems, state article 13[1] paragraph (1) of Law no. 303/2013, are part of the technical-municipal infrastructure of the administrative-territorial units, are goods of public interest and use and belong, by their nature or according to the law, to the public domain of the administrative-territorial units. These assets have a distinct legal regime - being inalienable, non-prescriptive and imperceptible, they cannot be deposited as a contribution to the capital of companies (including those set up by local and central public administration authorities) and cannot constitute guarantees for bank loans contracted by local public administration authorities or operators.

The water supply and sewerage systems are built on the public land of the locality, respectively they belong to their public domain, the competence of administration belongs to the deliberative authorities (local councils / city councils). In the case of financing to natural or legal persons under private law, other entities, water supply and sewerage systems will be transferred to the ownership of the administrative-territorial units in 2 ways: either free or for a fee, in a way of transmission in property, regulated by the legislation in force[4].

Therefore, these goods are and remain the property of the administrative-territorial unit, they cannot be sold or privatized, they cannot be seized for the debts of the operator or of the administrative-territorial unit, etc.

If the establishment and organization of the water supply and sewerage service belongs exclusively to the local public authorities, then the management can be organized in two ways: *direct management and delegated management.*

The management method is established by decisions of the deliberative authorities of the administrative-territorial units, depending on: the nature and state of the service; the need to ensure the best price / quality ratio; the current and future interests of the administrative-territorial units; the size and complexity of water supply and sewerage systems.

In the direct management, the local public administration authorities directly assume all the tasks and responsibilities regarding the organization and operation of the public water supply and sewerage service. Direct management is carried out through structures of local public administration authorities, which can be:

[4] According to article 19 pargraph. (4) of Law no. 303 of 13.12.2013, upon completion of construction works, public water supply and sewerage installations and networks, located on public land, built by individuals and / or legal entities, regardless of the source of funding, shall be submitted to the administration authority local authorities or directly to the operator in accordance with the decision of the local council.

According to this provision, all goods financed or built by citizens, economic agents on public land, are transferred to the property of the local public administration authority or directly to the operator.

First of all, we would like to draw your attention to an issue that could lead to serious violations of the law regarding the legal regime of public property. According to art. 131 of Law no. 303 of 13.12.2013, the water supply and sewerage infrastructure up to the delimitation point belongs to the public domain of the administrative-territorial unit. Therefore, the goods related to the water supply and sewerage service built on the public domain must be transferred to the ownership of the administrative-territorial unit. Subsequently, the local public authority will transfer these assets under management to the operators.

In this context, it is recommended that the transmission of goods built on public land by individuals and / or legal entities be done in the ownership of local public authorities, not in the ownership of the operators.

We also mention that, initially, this article also provided for the method of transmission, namely free of charge, without any reward from the public administration or the operator. However, by the Decision of the Constitutional Court no. 30 of 01.11.2016, the phrase "*free to balance*" was declared unconstitutional.

Currently, in the Parliament of the Republic of Moldova, the draft law for amending and supplementing some legislative acts no. 256 of 25.07.2017, which will clarify certain aspects regarding the transfer of ownership to the local public authorities of goods built by citizens, economic agents, etc.

Thus, article 19 paragraph (4) is proposed to be amended and supplemented by paragraph (41) as follows:

(4) *"The goods financed and / or built by natural and / or legal persons on public land, representing public water supply and sewerage systems, are transferred to the property of the administrative-territorial unit, based on a legal act regulated by the legislation in force."*

(4[1]) *'Goods may be transferred free of charge or for consideration, depending on the method of transmission agreed between the parties. In case of transmission for consideration, the reward will be made at the real value of the goods, demonstrated by supporting documents, being established by the agreement of the parties or by the decision of the court. Until the transfer of the goods in the ownership of the administrative-territorial unit or the initiation of these procedures by signing the corresponding legal acts, the operator is not entitled to provide / provide the public water supply and sewerage service through these goods. "*

a) specialized compartments, without legal personality, organized within the own apparatus of the local council of the administrative-territorial unit;

b) specialized entities, with legal personality, organized under the subordination of the local council of the administrative-territorial unit, having their own patrimony, own economic management and financial and functional autonomy.

With regard to *delegated management*, is the management method by which an administrative-territorial unit assigns to one or more operators, the right to supply / provide the service or a component thereof, based on a management delegation contract[5]. Delegation of the management of the service involves the actual operation of the service, the concession of the public system related to the delegated service, as well as the right and obligation of the operator to manage and operate that system.

According to article 13 paragraph (2) of Law no. 303 of 13.12.2013, the procedures for awarding management delegation contracts are the public tender and direct negotiation, organized on the basis of the Framework Procedure on the organization, conduct and award of contracts for the management of the public water supply and sewerage service, approved of Government.

Pursuant to Article 13(2) of Law No 303 of 13.12.2013, the procedures for the award of contracts for the delegation of management are *public tendering* and *direct negotiation*, organized under the framework procedure for the organization, conduct and award of contracts for the delegation of the management of the public water supply and sewage service, approved by the Government.

Regardless of the management method chosen, the local public authorities by the decision on giving in administration (direct management) / decision on awarding and concluding contracts for delegating the management of the service (delegated management) empowers the operator to supply / provide the public water supply and sewerage on the territory of the administrative-territorial unit. Thus, the operator has the right and obligation to provide the service through public water supply and sewerage systems within the competence of the local public authority, i.e., up to the limit of public / private ownership.

The local public authority does not have competences regarding the supply / provision of the public water supply and sewerage service on the private property of the consumers.

This limit is established by the delimitation point, representing the place where the consumer's indoor water and / or sewerage system connects to the public water supply and / or sewerage system. In the case of individual dwellings, the delimitation point is established at the exit of the meter installed in the connecting chamber, located within the limits of the consumer's territory. For residential blocks, the delimitation point is established at the exit of the meter installed in the basement of the residential block. For sewerage networks, the delimitation point is the connection to the public network in the direction of wastewater drainage.

According to the delimitation point, the consumer is responsible for the maintenance of the internal water / sewerage networks, respectively

[5] The contract for delegating the management of services is the document, concluded in writing, by which the administrative-territorial units assign, for a certain period, to an operator / some operators, acting at their own risk and responsibility, the right and obligation to provide / provide the service. public water supply and sewerage system, in full or, as the case may be, only certain activities specific to it, including the right and obligation to manage and operate the technical and municipal infrastructure royalties. From the moment of entry into force, the contract for the delegation of the management of the service shall become binding on the signatory parties.

The object of the contract for the delegation of the management of the public water supply and sewerage service is: the exclusive right to provide / provide public water supply and sewerage services within the area of territorial competence of the public authority; the exclusive right to operate, maintain and manage delegated assets, as well as investments in their rehabilitation and development.

Thus, the management delegation contract is the main document between the signatory parties, which lists the rights and obligations of the local public authority, on the one hand, and of the operator, on the other hand, regarding the organization and operation of the public water supply and sewerage.

for the quality of the given service. As this is the private property of consumers, these issues are governed by the rules of private property law.

If in the case of houses everything is clear, then there are a lot of questions about the provision of water supply and sewerage service in residential buildings. In multi-storey buildings or apartments, in addition to the living space, there are certain parts of the building, which can only be used in common, representing the common property of all tenants. Unless otherwise provided by law or by legal act, such common parts are the land on which the building is located, the roof, the terraces, the stairs and the stairwell, the halls, the basement, the elevators, the water and sewerage installations, electrical, telecommunications, heating and gas, other such parts and other goods which, according to the law or will of the parties, are of common use.

Characteristic of the common property is the fact that the common parts belong simultaneously and concurrently to all the owners, each of them having only an ideal and abstract share, without the goods being effectively divided.

Under this right, the co-owners have the obligation to bear the costs of maintenance, use, repairs, conservation of the common parts of the housing block in proportion to the share of the right that belongs to each.

The relations that are established between the co-owners regarding the common property on shares, the maintenance and operation of the common parts as well as the supply / provision of public services inside the condominium are the object of regulation of the Condominium Law in the housing fund no. 913/2000.

Returning to the water supply and sewerage service, according to article 4 paragraph (3) of Law no. 913/2000, the delimitation points of the internal installations in the condominium and of the public networks are:

a) to the water supply networks - the exit from the meter installed in the basement of the residential block according to the connection notice issued by the service operator;

b) to the sewerage networks - the connection unit to the public network in the sense of wastewater drainage.

Therefore, the reports on the supply/provision of water supply and sewerage services within the housing block after the demarcation point must be noted in Act No 913/2000 and carried out in a Regulation approved by Government Decision.

Concluions

The public water supply and sewerage service includes all activities of public utility and general economic and social interest carried out for the purpose of capturing, treating, transporting, storing and distributing drinking water on the territory of the administrative-territorial unit, as well as for collecting and purifying wastewater. This service is regulated, in particular, by the Law on the public water supply and sewerage service no. 303/2013. The object of the law is to create the legal framework for the establishment, organization, operation, regulation and monitoring of the public service of drinking water supply and sewerage in conditions of accessibility, availability, reliability, continuity, competitiveness, transparency, respecting quality, security and environmental protection. Everything that exceeds these activities is not subject to the regulation of Law no. 303/2013. And the application of the "share" is an illegal activity that is punishable in accordance with applicable law.

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CZU 349.23:364.3
DOI https://doi.org/10.52388/2345-1971.2021.e1.10

ANALYSIS OF THE LAW OF THE REPUBLIC OF MOLDOVA ON THE GRANTING OF COMPENSATION IN THE EVENT OF THE DEATH OF ONE OF THE SPOUSES

Tudor CAPSA
Doctor of Law, Associate Professor, Labor Relations Research Center,
Chisinau, Republic of Moldova
e-mail: *tudor.capsa@gmail.com*
https://orcid.org/0000-0001-6333-1016

The article analyzes in detail and comments article by article the main legal aspects of the Law of the Republic of Moldova on the provision of benefits in the event of the death of one of the spouses No. 156/2019 through the prism of the norms and prescriptions of the national legislation on social insurance and social security, as well as their practical and correct application, with the formulation in the process of presenting the material of substantiated conclusions and recommendations on the multifaceted and topical topic under consideration.

At the same time, the comments contained in this article are intended to assist faculty, doctoral students, undergraduates and students of law schools / faculties and scientific researchers of organizations / centers in the field of science and innovation in the systemic assimilation of social insurance and social security norms. , regulating the procedure for registration and payment of benefits due to the death of one of the spouses.

In addition, these comments are aimed at correct / accurate understanding and application of the provisions of the current laws and regulations on social insurance and social security by employees of social insurance and social assistance / protection authorities at all levels, lawyers, inspectors of human resources services, representatives of social partners and non-governmental organizations. , entrepreneurs, judges, prosecutors, lawyers, mediators, trade unionists and activists, interested employees and government officials.

Keywords: *legislation, social insurance, social security, deceased spouse, pension, benefit.*

ANALIZA LEGII REPUBLICII MOLDOVA CU PRIVIRE LA ACORDAREA INDEMNIZAȚIEI ÎN CAZUL DECESULUI UNUIA DINTRE SOȚI

Prezentul articol analizează în detaliu și oferă comentarii, articol cu articol, referitoare la principalele aspecte juridice ale Legii Republicii Moldova nr. 156/2019 Cu privire la acordarea indemnizației în cazul decesului unuia dintre soți prin prisma normelor și prescripțiilor legislației naționale privind asigurările sociale și securitatea socială, precum și aplicarea lor practică și corectă, cu formularea în procesul de expunere a materialului a concluziilor și recomandărilor fundamentate pe marginea temei multifacetice și actuale cercetate.

Totodată, comentariile cuprinse în acest articol sunt destinate să acorde asistență corpului profesoral- didactic, doctoranzilor, masteranzilor, studenților instituțiilor superioare de învățământ/facultăților de drept și cercetătorilor științifici ai organizațiilor/centrelor din domeniul științei și inovațiilor în asimilarea sistemică a normelor asigurărilor sociale și de asistență socială, ce reglementează modul de solicitare și plată a indemnizației în urma decesului unuia dintre soți.

În plus, aceste comentarii sunt orientate spre înțelegerea și aplicarea corectă/exactă a prevederilor actelor legislative și normative în vigoare privind asigurările sociale și securitatea socială de către angajații organelor de asigurări sociale și organelor de asistență/protecție socială la toate nivelurile, juriști, inspectorii serviciilor resurse umane, reprezentanții partenerilor sociali și ai organizațiilor ne-

guvernamentale, antreprenori, judecători, procurori, avocați, mediatori, lucrători și activiști sindicali, salariați și funcționari publici interesați.

Cuvinte-cheie: *legislație, asigurare socială, asistență socială, soț decedat, pensie, indemnizație.*

ANALYSE DE LA LOI DE LA RÉPUBLIQUE DE MOLDOVA SUR L'OCTROI DES PRESTATIONS EN CAS DE DÉCÈS DE L'UN DES ÉPOUX

L'article analyse en détail et commente article par article les principaux aspects juridiques de la loi de la République de Moldova sur l'octroi des prestations en cas de décès de l'un des époux n ° 156/2019 à travers le prisme des normes et les réglementations de la législation nationale sur les assurances sociales et la sécurité sociale, ainsi que leur application pratique et correcte, avec la formulation en cours de présentation du matériel de conclusions et de recommandations étayées sur le sujet à multiples facettes et d'actualité à l'étude.

Dans le même temps, les commentaires contenus dans cet article visent à aider les professeurs, les doctorants, les étudiants de premier cycle et les étudiants des facultés / facultés de droit et les chercheurs scientifiques des organisations / centres dans le domaine des sciences et de l'innovation dans l'assimilation systémique des assurances sociales et normes de sécurité sociale., réglementant la procédure d'enregistrement et de paiement des prestations en cas de décès de l'un des époux.

En outre, ces commentaires visent à la compréhension et à l'application correctes / précises des dispositions des lois et règlements en vigueur sur les assurances sociales et la sécurité sociale par les employés des assurances sociales et des autorités d'assistance / protection sociale à tous les niveaux, avocats, inspecteurs services de ressources, représentants des partenaires sociaux et des organisations non gouvernementales., entrepreneurs, juges, procureurs, avocats, médiateurs, syndicalistes et militants, employés intéressés et fonctionnaires.

Mots-clés: *législation, assurance sociale, sécurité sociale, conjoint décédé, pension, prestation.*

АНАЛИЗ ЗАКОНА РЕСПУБЛИКИ МОЛДОВА О ПРЕДОСТАВЛЕНИИ ПОСОБИЯ В СЛУЧАЕ СМЕРТИ ОДНОГО ИЗ СУПРУГОВ

В статье детально анализируются и комментируются постатейно основные правовые аспекты Закона Республики Молдова № 156/2019 О предоставлении пособия в случае смерти одного из супругов сквозь призму норм и предписаний национального законодательства о социальном страховании и социальном обеспечении, а также их практического и правильного применения, с формулированием в процессе изложения материала обоснованных выводов и рекомендаций по рассматриваемой многогранной и актуальной теме.

Наряду с этим, комментарии, содержащиеся в данной статье, призваны оказать помощь профессорско-преподавательскому составу, докторантам, магистрантам и студентам юридических высших учебных заведений/факультетов и научным исследователям организаций/центров в области науки и инноваций в системном усвоении норм социального страхования и социального обеспечения, регламентирующих порядок оформления и выплаты пособия по причине смерти одного из супругов.

Помимо этого, данные комментарии нацелены на правильное/точное понимание и применение положений действующих законодательных и нормативных актов о социальном страховании и социальном обеспечении работниками органов социального страхования и органов социальной помощи/защиты всех уровней, юристами, инспекторами кадровых служб, представителями социальных партнеров и неправительственных организаций, предпринимателями, судьями, прокурорами, адвокатами, медиаторами, профсоюзными работниками и активистами, заинтересованными наемными работниками и государственными служащими.

Ключевые слова: *законодательство, социальное страхование, социальное обеспечение, умерший супруг, пенсия, пособие.*

Introduction

The organic Law No. 156/2019 adopted by the Moldovan Parliament on the provision of benefits in the event of the death of one of the spouses [1] (hereinafter - Law No. 156/2019) is intended to guarantee by the Republic of

Moldova (RM) for a certain period of time to the surviving spouse the right to a monthly allowance in the amount of a ***пенсии по возрасту*** (ПВ ***) "pension for the age*** (PA)" that the deceased spouse received, depending on the duration of its receipt.

Main ideas of the research

It should be noted that the state social insurance system (SSIS) is organized and operates on the basis of the principles established in Article 3 of Law No. 489/1999 on the state system of social insurance [2], one of which is the principle of participation, according to which the realization of the right to social insurance in our country depends on the payment of social insurance contributions.

In addition, in the SSIS, benefits to insured persons are provided in cash, depending on the payment of social insurance contributions. Thus, a pension is an amount of money that is paid to an insured person who is entitled to it on the basis of the mandatory payment of state social insurance contributions from the period worked by the person. Accordingly, the state is obliged to pay a pension during the passive period of life, the amount of which is determined by the principle of its participation.

In this context, Law No. 156/2019, commented below, proceeds from the principle of participation, which is the basis of the organization and functioning of the SSIS. It aims to provide additional financial resources to the surviving spouse, by compensating for lost income due to the death of the spouse, as well as to strengthen the trust of payers in the domestic pension system.

Let us consider the present organic law article by article.

Article 1. Granting the right to benefits in the event of the death of one of the spouses

1) In the event of the death of one of the spouses who received an age pension of less than five years after the establishment of the right to a pension in accordance with the Law on the State Pension System No. 156/1998, the surviving spouse is provided with a monthly allowance.

2) The amount of the benefit is set in the amount of the old-age pension paid on the day of the death of the recipient of the pension, but cannot exceed the sum of five average monthly wages projected in the economy for the year in which the person's death occurred.

3) The benefit is paid monthly over a period calculated according to the formula:

T = 5–p, where:

T is the period during which the surviving spouse is entitled to receive benefits;

p is the period for which the deceased spouse received an old-age pension.

4) The benefit is paid if, on the day of the death of the recipient of the pension, the surviving spouse has been married to him for at least 15 years. The benefit is provided regardless of whether the surviving spouse is a recipient of a pension in the state pension system, if the pension paid to the surviving spouse or the insured monthly income realized by him in the month of the death of the spouse does not exceed 1.5 times the subsistence minimum for pensioners according to the data available to National Bureau of Statistics at the time the grant was requested.

[*Art. 1 paragraph (4) amended by Wage 37 of 02/28/20, MO 84/03/14/20 art. 86; valid from 14.03.20*]

5) The entitlement to benefits may be claimed by the surviving spouse within three years of the death of the spouse.

1. From the content of the legal norm, par. (1) of the commented article 1 of Law No. 156/2019, it follows that in the event of the death of one of the spouses (husband or wife) who received PV (this pension does not include other types of pensions, for example, a pension for disability; survivor's pension; special pension; early old-age pen-

sion, etc.) less than five years (for example, who received PV for 4 years and 10 months) after the establishment of the right to such a pension in accordance with the Law on State Pension system No. 156/1998 [3] (hereinafter referred to as the Law on SBS), the surviving spouse is provided with a monthly allowance in connection with the death of his spouse (MPSS).

Establishment of the right to PA, referred to in par. (1) article 1 of Law no. 156/2019, is carried out in accordance with the basic requirements of article 14-17, 30-32 and 41 of the Law on the State Pension Insurance. In particular, based on the requirements of Article 14,15 and 41 of the Law on the State Pension Insurance, the right to PA arises when the conditions for retirement age and insurance period provided for by this law are met. PA can be appointed upon reaching the standard retirement age provided for in Article 41 of the Law on the State Pension Insurance (the ceiling for which for men was reached on July 1, 2019 and is 63 years, and for women from July 1, 2021 to December 31, 2021 - 59 years and 6 months), subject to a minimum insurance period of 15 years. An insured person who, upon reaching the standard retirement age, does not have the aforementioned minimum insurance period (15 years), is entitled to apply for social benefits in accordance with the Law on State Social Benefits for certain categories of citizens No. 499/1999 [4]. If the insured person, upon reaching the standard retirement age, did not exercise the right to PA in a timely manner (for one reason or another), the subsequent appointment of PA takes into account the insurance experience acquired before the day of application (more precisely, before the date of registration of a written application for the appointment of PA).

Further, the legal requirements of Article 30-32 of the Law on the State Pension Insurance (which is referred to in par. (1) art. 1 of Law No. 156/2019) provides that the pension (including the PA) is assigned and paid by the social insurance authority (more precisely, the territorial social insurance office - TSIO), who has the right to exercise control over the reliability of documents confirming the length of service and insured income issued by the competent authorities. The PA is appointed at the request of the person entitled to it, his/her guardian (custodian). An application for the appointment of a PA and the necessary documents are submitted to the TSIO at the place of permanent residence of the insured person, where they are mandatory registered. The decision to appoint a PA or to refuse to appoint it is made by the TSIO and signed by the head of this body within 30 days from the date of submission of the application with all the necessary documents. The decision to refuse to appoint an PA with an indication of the reasons for the refusal is sent to the applicant within five days from the date of its issuance. PAs are appointed for life. PA is assigned from the date of the emergence of the right to a pension in accordance with the Law on the State Pension Insurance, if the application and all necessary documents were submitted no later than 30 days after this date. If the 30-day application deadline has expired, the PA is assigned from the date of submission of the last required document.

It should also be taken into account that since the provision of par. (1) of article 1 of Law No. 156/2019 links the payment of the EPSS with the receipt of the PA by the deceased spouse in accordance with the Law on the State Civil Service, then in such circumstances, the provisions of the commented law do not apply in the event of death of the spouse, who received one or another type of pension on the basis of the Law on pensions for military personnel and persons in command and rank and file of the internal affairs bodies and the General Inspectorate of the Carabineers No. 1544/1993 [5].

It should be emphasized that, in accordance with paragraph 11 of the Regulation on the Award and Payment of a death benefit to a spouse approved by Government Regulation 712/2019 [6] (hereinafter referred to as the Regulation), the amount of PA paid on the date of death of the beneficiary, is confirmed on the basis of information contained in the Information System «Social Assistance» of the National Social Insurance Fund (CNAS).

2. Further, based on the contents of Government Regulation 923/2020 [7], the average monthly wage per economy projected for 2021 is 8,716 MDL.

Consequently, if the death of the spouse occurred in 2021 (after the entry into force of Law 156/2019), the surviving spouse is granted the Unified Pension Insurance System, which may not exceed the ceiling of the five average monthly wages projected by the economy for that year, which is therefore the maximum sum of 43, 680 (8,716 x 5) MDL (it is clear that the grounds for not exceeding such a sizeable ceiling in 2021 will rarely arise in practice).

At the same time, it should be noted that, in accordance with clause 14 of the Regulations, the appointed EPSS *(the Unified Pension Insurance System)* is not reviewed and not indexed (in the future), including if the Government predicts a higher average monthly wage in the economy in future years, for example, for the next 2022 year and so on.

3. From the essence of paragraph (3) of the commented article 1 of Law no. 156/2019 and paragraph 12 of the Regulation, it follows that the EPSS is paid to the surviving spouse on a monthly basis during the period calculated, according to the following legal formula:

T = 5 – p, whereas:

T is the period during which the surviving spouse is entitled to receive EPSS (the duration of which cannot exceed five years);

p is the period for which the deceased spouse received PA (for example, 4 years).

In other words, EPSS is paid to the surviving spouse on a monthly basis for a period equal to the interim/interval during which the deceased spouse received PA (for example, within three or four years), but the duration of which, in any case, should not exceed a maximum of five years.

It is important to take into account that, by virtue of the provisions of clause 13 of the Regulation, in the event that the surviving spouse is assigned an EPSS, during the period of its payment (the duration of which cannot exceed five years), he/she is not entitled to simultaneously demand the appointment and payment of a survivor's pension (PSP) in accordance with Articles 24 - 27 of the Law on the State Pension Insurance.

However, after the expiration of the period during which the surviving spouse received the EPSS (for example, after the expiration of this period in 2024), he/she will subsequently be entitled to apply for the receipt of the PSP, which is due to him/her on a general basis, taking into account the requirements of Articles 24 - 27 of the Law about the Law on the State Pension Insurance.

4. The norm of paragraph (4) of the commented article 1 of Law No. 156/2019 and the prescriptions of sub. b) clause 3 of the Regulation establishes that the EPSS is paid/provided to the surviving spouse if on the day of the death of the PA recipient, the surviving spouse, regardless of age (before retirement or after retirement), has been married to the deceased spouse *for at least 15 years*. At the same time, the EPSS is provided regardless of whether the surviving spouse is a recipient of a particular pension in the state pension system, *but under one important condition*: the amount of the pension paid to the surviving spouse, or the insured monthly income realized by him/her in the month of the death of the spouse (salary, etc.). .) must not ex-

ceed 1.5 times the subsistence minimum for pensioners, according to the data available to the National Bureau of Statistics (NBS) at the time of requesting the allowance. It should be noted that the subsistence minimum for pensioners (and for other categories of citizens) is determined by the NBS (the National Bureau of Statistics), taking into account the requirements of Law No. 152/2012 on the subsistence minimum [8] and the Regulation on the procedure for calculating the subsistence minimum, approved by Government Decision No. 902/2000 [9].

In other words, the right to receive the EPSS arises only if, on the day of the death of the recipient of the PA *(for example, May 25, 2021*), the surviving spouse, regardless of his/her age, was legally married to the deceased spouse for at least 15 years (based on the date of registration of the marriage indicated in the marriage certificate of these spouses and the date of registration of the death of the spouse indicated in the certificate of his/her death).

At the same time, the legislator does not stipulate clearly and unequivocally that the surviving spouse should be in only one marriage with the deceased spouse continuously for 15 or more years in a row on the day of the death of the recipient of the PA (such a way that the spouses have been in marital relations for 15 or more years logically / theoretically possible / permissible not only in one single marriage with a deceased spouse, but in total and on the basis of two or even several legally concluded marriages between them, if they, after a previous divorce / divorces between themselves, were not married / married to others / third parties).

Such a conclusion (regarding the stay of spouses for 15 or more years in total in marital relations) follows, in turn, from the provisions of the Hague Conventions on Family and Marriage (1950–1980). And also, in particular, from the meaning/logic of Article 11 of the Convention on the recognition of divorces and decisions on separation of spouses of June 1, 1970 [10] (which Moldova acceded to on the basis of Law no. 106/2011 [11]), according to which the state that is obliged to recognize a divorce (in the Republic of Moldova the termination of a marriage by divorce of spouses is recognized in accordance with Articles 33-39 of the Family Code of the Republic of Moldova [12]), cannot prevent a new marriage of any of the spouses (not excluding the conclusion of a new marriage between former spouses). Considering, however, that by virtue of Part. (1) Art. 8 of the Constitution of the Republic of Moldova [13], our country has undertaken to comply with international treaties/conventions, one of the parties of which it is, to build its relations with other states on the universally recognized principles and norms of international law.

In order to avoid unnecessary and contradictory interpretations in practice on the issue of spouses being married for 15 or more years, it is still advisable to carry out an official interpretation of these legal provisions, taking into account the requirements of Articles 71 and 72 of the Law on Normative Enactments No. 100/2017 [14].

In addition, the legislator determines that the surviving spouse, EPSS, may be appointed regardless of whether he or she has received some form of state pension (*for example: PA; Disability Pension; Survivors' Pension; Special Pension; Early Retirement Pension; Retirement Pension, etc.)* or failure to receive any type of state Pension (due to lack of legal basis for its appointment, etc.).

In the context of the explained legislation, para. 3 of the Regulation adds that the EPSS is granted to the surviving spouse if the following conditions are met:

➢ at the date of death, the deceased spouse has been in receipt of an PA for less than five years following the determination of entitlement to such a pension (for exam-

ple, within three years of the appointment of the PA);

➢ the surviving spouse, regardless of age, has been married to the deceased spouse for at least 15 years (say, from 2003 to 2021);

➢ EPSS was claimed by the surviving spouse within three years of the death of the spouse (e.g., May 10, 2022 if the spouse died after January 1, 2020).

5. Art. 1 of Law 156/2019 and sub-regulations, as explained under Art. 1(5). c) Regulation 3 Entitlement to the EPSS may be claimed by the surviving spouse within three years of the date of the death of the spouse.

Thus, for example, if a husband received a PA within four years of the award of the pension in 2017 and he died in the current year (for example, April 30, 2021), in such circumstances his surviving wife (widow), whether or not she has the status of a pensioner, shall be entitled to receive the EPSS (by written application to the CCSS in accordance with the established procedure) at any time during the period (not later than) of three consecutive years, calculated from the date of the death of his husband (April 30, 2021) as recorded on his death certificate, and before the calculated date of expiry of the three-year period.

At the same time, it is important to emphasize that the mentioned three-year period must be calculated taking into account the requirements of Article 387 of the Civil Code of the Republic of Moldova [15] (CC), according to which a year is considered equal to three hundred and sixty-five days.

Article 2. Applying for an allowance

(1) An application for granting a benefit shall be submitted personally by the surviving spouse to the territorial social insurance body at the place of residence, presenting documents confirming the right to the benefit.

(2) The procedure for applying for benefits is established by the Government.

1. The norm of part (1) of the commented article 2 of Law No. 156/2019 provides that the application for the appointment of the EPSS is submitted personally by the surviving spouse to the TSIO at the place of residence with the presentation of documents confirming the right to such an allowance.

Based on the provisions of Article 38 of the Civil Code, the place of residence of an individual (including the surviving spouse) is the place of usual residence. A person is considered to have this domicile until he has acquired another. The place of habitual residence is based on the close and stable connection of the natural person with the respective place. In determining the place of habitual residence, all relevant factual elements shall be taken into account, in particular the duration and regularity of the person's presence in the relevant place, as well as the conditions and grounds for such presence.

In turn, Article 39 of the Civil Code determines that until proven otherwise, the place of residence or place of temporary stay of an individual (surviving spouse) is assumed to be in the place indicated as such in the identity card or, as the case may be, in another identity document prescribed by law, or rather, in a particular document specified in Article 1 of the Law on Identity Documents of the National Passport System No. 273/1994 [16] (which include: all types of passports, identity cards, types residence and travel documents of stateless persons, refugees and beneficiaries of humanitarian protection).

Thus, the application for the appointment of the EPSS (to which documents confirming the right to such allowance must be attached) is submitted personally by the surviving spouse to the TSIO at their place of residence (for example, in municipality Balti), determined by taking into account the provisions of Articles 38 and 39 of the Civil Code (described in detail above).

2. As it is clear from the content of par.

(2) of the commented article 2 of Law No. 156/2019, the specific procedure for applying for an EPSS is established by the Government.

The main government norm regulating the specific procedure for applying for an EPSS currently includes the above-mentioned Regulation. In particular, clause 5 of the Regulations prescribes that an application for the appointment of an EPSS in the event of death of one of the spouses is submitted personally by the surviving spouse, with the presentation of supporting documents, to the TSIO at the place of residence of the surviving spouse, and is registered without fail. The application is submitted according to the model established by the CNAS.

Article 3. Appointment and payment of benefits

(1) The allowance is assigned from the month of application. If the application is submitted in the month of the death of the spouse, the allowance is assigned from the next month.

(2) The payment of the allowance is made monthly for the current month by the payment service provider on the territory of the Republic of Moldova designated as the recipient of the allowance in the manner prescribed by the Government.

(3) If the surviving spouse applies for the allowance provided for by this law, during the period of its payment, he is not entitled to the appointment and payment of a survivor's pension in accordance with the Law on the State Pension System No. 156/1998.

(4) If the beneficiary dies, the unclaimed amount will not be paid to the other person.

(5) Deductions from the monthly allowance are made in accordance with the provisions of Article 38 of the Law on the State Pension System No. 156/1998.

1. The provisions of paragraph (1) of the commented article 3 of Law No. 156/2019 specifies that the EPSS is appointed from the month of submission of the application. If the application is submitted in the month of the death of the spouse, the allowance is assigned from the next month.

In other words, the EPSS must be appointed by the TSIO from the month the application was submitted (more precisely, from the month the application was registered in the prescribed manner with the TCSS), if it was filed not in the month of the death of the spouse (for example, in February 2021), but later (for example, in March-May 2021).

In the case when the application for the appointment of the EPSS was submitted (promptly) in the month of the death of the spouse (say, in April 2021) - this benefit will be assigned not from the month of application (April 2021), but from the next month (that is, from May 2021).

In the context of the above, clause 8 of the Regulations provides that the granting of the right to the EPSS or the rejection of the application is carried out on the basis of a decision made by the TSIO and signed by its head, within 30 days from the date of submission of the application with all the necessary documents (more precisely, from the date of registration of these statements with attached legal acts in the TSIO).

Along with this, clause 9 of the Regulations means that the decision of the TSIO to reject the application for the appointment of the EPSS, indicating the specific reasons for the refusal, must be sent to the applicant within 5 days from the date of its issuance.

2. From the essence of paragraph (2) of the commented article 3 of Law No. 156/2019, it follows that the payment of the EPSS is made monthly for the current month by the payment service provider in the territory of the Republic of Moldova, designated as the recipient of this benefit in the manner established by the Government.

In this regard, the provisions of clauses 17-19 of the Regulation specify that the EPSS is

paid using the payment method, chosen by the recipient and available in the government's electronic payment service (MPay). EPSS amounts set and not received by the recipient for 12 consecutive months are suspended. Payment of the EPSS is resumed on the basis of an application by the beneficiary or a representative authorized by a power of attorney and the applicant's identity card, filed with the TSIO, and are paid retroactively from the date of suspension. Individuals, elderly or for health reasons, who are unable to independently obtain an EPSS from a payment service provider, it will be delivered to their home based on an application submitted and accepted by the payment service provider.

3. The norm of paragraph (3) of the commented article 3 of Law No. 156/2019 and the prescription of paragraph 13 of the Regulations stipulate that in the case when the surviving spouse applies for the appointment of an EPSS, during the period of its payment, he is not entitled to the appointment and payment of a pension on the occasion survivor's loss Survivor's Pension in accordance with the Law on the State Pension System.

Therefore, in the event that the surviving spouse is assigned an EPSS, during the period of its payment (the duration of which cannot exceed a five-year period), he is not entitled to the appointment and payment in parallel with the survivor's pension in accordance with Articles 24 - 27 of the Law on the State Pension System.

However, after the expiration of the period during which the surviving spouse was entitled to receive the EPSS (for example, in 2024), he/she will subsequently be entitled to apply for receiving survivor's pension, which relies on a general basis, taking into account the requirements of Articles 24 - 27 of the Law on the State Pension System.

In particular, the requirements of Article 24 of the Law on the State Pension System established that the Survivor's Pension is appointed if the deceased was the recipient of the PA. The Survivor's Pension is appointed regardless of the duration of the insurance period in the event that the death of the breadwinner occurred as a result of an industrial injury or occupational disease.

4. From the provisions of paragraph (4) of the commented Article 3 of Law No. 156/2019 and paragraph 26 of the Regulations, it follows that in the event of the death of the recipient of the EPSS, the unclaimed (remaining unreceived) amount is not paid to another person in the future.

In the context of the aforementioned legal provisions, paragraphs 23 and 25 of the Regulations additionally and more broadly specify that the payment of the EPSS in the event of the death of one of the spouses, assigned but not claimed within 12 months by the surviving spouse, is terminated. Payment of the EPSS is renewed retroactively from the month in which the recipient submits the application and documents proving his identity to the TSIO, from the date of suspension. EPSS assigned and not paid in a timely manner to the surviving spouse cannot be paid to another person.

5. The rule enshrined in paragraph (5) of the commented article 3 of Law no. 156/2019 provides that deductions from the EPSS are made in accordance with the provisions of art. 38 of the Law on the State Insurance System.

In particular, consideration of the cited rule through the prism of the requirements of Part (1) Art. 38 of the Law on the State Insurance System and clause 27 of the Regulation allows us to state that deductions from the EPSS in the event of the death of one of the spouses are made on the basis of:

- ✓ executive documents, according to the Executive Code of the Republic of Moldova [17] (EC);
- ✓ decisions made by the CNAS or TSIO in order to recover amounts not due to the recipient, paid to him/her in the form of EPSS.

Along with this, clause 27 of the Regulations determines that amounts in the form of EPSS paid unreasonably through the fault of the recipient are withheld monthly in an amount not exceeding 20% of the amount of EPSS, but based on the application of the recipient, the retention percentage can be increased to 100%. In the event of the recipient's death, unjustifiably paid EPSS will not be recovered.

Article 4. Source of payment of benefits

Benefits assigned in accordance with this law shall be paid from the state social insurance budget.

The commented provisions of Article 4 of Law No. 156/2019 provide that the EPSS is paid from the state social insurance budget (SSIB).

In this regard, it should be noted that, according to part (1) of article 131 of the Constitution of the Republic of Moldova, the SSIB is an integral part of the national public budget (along with the state budget and the budgets of districts, cities and villages).

On the other hand, the norms of Part. (2) Art. 31 and Article 33 of the Law on Public Finance and Fiscal Responsibility No. 181/2014 [18] prescribes that the SSIB is administered (managed) by the CNAS. The relationship between the state budget and the SSIB is implemented through:

- special-purpose transfers intended for the provision of social benefits (including EPSS) and other expenses that, under the current legislation, are borne by the state budget through the State Social Insurance Fund (the volume of such transfers is established in accordance with the legislation in the field of social protection, including Law No. 156/2019);
- transfers from the state budget to cover the insufficiency of the income of the SSIB in the case when the resources of the SSIB do not cover its expenses.

2. It should also be noted that Article 4 of Law No. 156/2019 finds its definite development in the prescriptions of paragraphs 31 and 32 of the Regulations, according to which, on a monthly basis, CNAS transfers to the current account as funds temporarily in the use of penitentiary institutions, financial resources intended for the payment of benefits, and the administration of the penitentiary institution distributes the amounts received on this account to the personal accounts of convicts. By the 4th day of the month following the reporting period, penitentiary institutions shall submit to CNAS reports on the amounts received and distributed to the personal accounts of convicted persons.

Article 5. Final and transitional provisions

(1) The provisions of this law shall apply in case of death after January 1, 2020.

(2) The government, within three months from the date of publication of this law in the Official Monitor of the Republic of Moldova, adopts the normative acts necessary for its implementation.

1. From the content of paragraph (1) of the commented Article 5 of Law No. 156/2019, it is appropriate that the legal norms of the said law can only be legally applied to cases of death after January 1, 2020.

In cases of death occurring before 24:00 on December 31, 2019 inclusive, the legal provisions of Law No. 156/2019 do not apply.

It should be noted that the text of part (1) of article 5 of Law No. 156/2019 proceeds from the requirements of art. 76 of the Constitution of the country, according to which the law enters into force on the day of its publication in the Official Monitor of the Republic of Moldova (OM RM) or within the period provided for in the law itself, which, in accordance with paragraph. b) par. 1 of the Constitutional Court judgment no. 32/1998 on the interpretation of Art. 76 of the Constitution of the Republic of Moldova "Entry into force of the law" [19] cannot precede the date of official publication.

At the same time, the article 5 para. (1) of Law no. 156/2019 under consideration is fully consistent with the provisions of art. 73 par. the act is valid only during the period of legal force and, as a rule, cannot have retroactive effect. Only normative acts mitigating liability have retroactive effect.

Based on the provisions of part (2) of the commented article 5 of Law No. 156/2019, the Parliament instructed the Government to adopt the regulatory acts necessary for its implementation within three months from the date of publication of this law in the OM RM.

As you know, the text of Law No. 156/2019 was published in full in the OM RM on December 13, 2019. Therefore, the Government had to develop, agree, adopt and publish in the OM RM within three months (December 13, 2019 – March 12, 2020) regulations necessary for the correct application of the provisions of Law No. 156/2019 and their clear implementation in full.

In this regard, it should be emphasized that the main normative act (the above-mentioned Regulation), the provisions of which were used in full in the process of arguing / presenting these comments, was urgently approved by the Government and published in full in the OM RM of December 31, 2019, which allowed the CNAS and the TSIO to start a clear and competent execution/application of the provisions of Law No. 156/2019, starting without delay from January 1, 2020 and continue further.

Along with this, it is possible that for the correct application of certain/disputed norms of Law No. 156/2019, additional development and subsequent adoption by the Government of other normative acts for these purposes will be required, as provided for by paragraph (2) of Article 5 of Law No. 156/2019.

Conclusions

We believe that the comments to Law No. 156/2019 set out in this article make it possible to provide, in general, the necessary and demanded assistance in the systematic assimilation of the main theoretical and practical legal aspects of the national legislation on social insurance and social security, regulating the conditions and procedure for granting benefits in the event of the death of one of spouses.

At the same time, these comments are intended to contribute to the improvement of the process of continuing legal education of adults in the field of social and labor relations, as an integral part of lifelong learning, providing continuous access of citizens to legal science, legal information, legal culture in order to adapt flexibly and competently to new, dynamically changing socio-economic conditions and development necessary for the professional and social activities of the modern personality.

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CZU 343.133
DOI https://doi.org/10.52388/2345-1971.2021.e1.11

SEPARATE ASPECTS OF THE PROSECUTOR'S PREPARATION FOR PRESENTATION OF THE STATE ACCUSATIONS IN THE COURT

Gheorghe SULT
Doctor of Law, Associate Professor, Comrat State University,
Comrat, Republic of Moldova
e-mail: *sultgg@mail.ru*
https://orcid.org/0000-0002-3636-2359

The article examines aspects of preparation for the presentation prosecutor's of public prosecution in criminal courts in the Republic of Moldova. The analysis of the preliminary preparation for the presentation of the public prosecution in the courts is given. Study of the materials of the criminal case, regulatory legal acts, development of a preliminary position on a criminal case, development of a plan for participation in the trial, elements of the preparation of the prosecutor for the effective support of the public prosecution. The prosecutor's analysis of the materials of the criminal case as the basis for high-quality support of the state prosecution.

Forecasting possible situations at the stage of pre-trial preparation, the use of certain tactical techniques for studying the case materials; study of normative materials and judicial practice in relation to a specific category of cases; generalization and analysis of the materials of the criminal case; forecasting various situations that may arise during the court session; a set of tactics used to solve them; build versions of the prosecution; comprehensive planning of activities to maintain public prosecution. To adequately perceive what is happening in the trial, to competently and timely respond to the behavior of the participants in the process, to investigate and collect evidence that incriminates the defendant in the commission of a crime.

Keywords: *criminal case, judicial policy, public accusations, judicial process, prosecutor.*

UNELE ASPECTE ALE PREGĂTIRII PROCURORULUI PENTRU PREZENTAREA ACUZAȚIILOR PUBLICE ÎN INSTANȚA DE JUDECATĂ

Articolul examinează unele aspecte ale pregătirii procurorului pentru prezentarea acuzațiilor în instanțele de judecată din Republica Moldova. Este prezentată analiza pregătirii preliminare pentru prezentarea acuzațiilor, procesul de studiere a materialelor dosarului penal, a actelor juridice de reglementare, elaborarea unei poziții preliminare cu privire la dosarul penal, elaborarea unui plan de participare la proces, elemente de pregătire procurorului pentru susținerea acuzațiilor. Un loc aparte îl ocupă analiza de către procuror a materialelor dosarului penal drept bază pentru susținerea în instanță a acuzațiilor de stat.

Autorul acordă o deosebită atenție prognozării unoreventuale situații care pot apărea la etapa de pregătire către proces, utilizării anumitor tehnicitactice pentru studierea materialelor dosarului; studierii materialelor, actelor normative și a practicii judiciare în raport cu o anumită categorie de dosare; generalizării și analizei materialelor dosarului penal; prognozării diferitelor situații care pot apărea în timpul ședinței judecătorești; elaborării unui set de tactici folosite pentru soluționarea acestor situații; creării de versiuni ale urmăririi penale; planificării cuprinzătoare a activităților pentru menținerea acuzațiilor ș.a.

Cuvinte-cheie: *dosar penal, politică judiciară, acuzații de stat, proces judiciar, procuror.*

CERTAINS ASPECTS DE LA PRÉPARATION DU PROCUREUR À LA PRÉSENTATION DES ACCUSATIONS PUBLIQUES DEVANT LE TRIBUNAL

L'article examine certains aspects de la préparation du procureur à la présentation des accusations devant les tribunaux de la République de Moldova. L'analyse de la préparation préliminaire à la

présentation des accusations, le processusd'étude des matériaux de l'affairepénale, les actes juridiques réglementaires, l'élaborationd'une position préliminaire sur l'affairepénale, l'élaboration d'un plan de participation au procès, des éléments de préparation du procureur pour la poursuite des accusations estprésentée. Une place particulière estoccupée par l'analyse du procureur des matériaux de l'affaire pénale comme base pour soutenirdevant le tribunal les accusations d'état. L'auteur accordeune attention particulière à la prévision des situations possibles qui peuventsurvenir au stade de la préparation du processus, l'utilisation de certaines techniques tactiques pour l'étude des matériaux de l'affaire pénale; l'étude des matériaux, des actes normatifs et de la pratique judiciaire en relation avec une certaine catégorie de dossiers; généralisation et analyse des matériaux de l'affaire pénale; prévision des differents situations pouvant survenirlors de l'audience devant le tribunal; l'élaboration d'un ensemble de tactique sutilisées pour résoudreces situations; création de versions de poursuites pénales; planification complète des activités pour maintenir les accusations, etc.

Mots-clés: *affaire pénale, politique judiciaire, accusations publiques, processus judiciaire, procureur.*

ОТДЕЛЬНЫЕ АСПЕКТЫ ПОДГОТОВКИ ПРОКУРОРА К ПРЕДСТАВЛЕНИЮ ГОСУДАРСТВЕННОГО ОБВИНЕНИЯ В СУДЕБНОЙ ИНСТАНЦИИ

В статье рассматриваются аспекты подготовки к представлению прокурором государственного обвинения по уголовным делам в судебных инстанциях Республики Молдова. Приводится анализ предварительной подготовки к представлению государственного обвинения в судах. Отдельное внимание уделено изучению материалов уголовного дела, нормативных и правовых актов, выработке предварительной позиции по уголовному делу, разработке плана участия в судебном разбирательстве, элементам подготовки прокурора для эффективного поддержания государственного обвинения. Также представлен анализ прокурором материалов уголовного дела как основы качественного поддержания государственного обвинения. Рассматриваются еще такие вопросы, как прогнозирование возможных ситуаций на стадии досудебной подготовки, применение определенных тактических приемов изучения материалов дела; изучение нормативных материалов и судебной практики применительно к конкретной категории дел; обобщение и анализ материалов уголовного дела; прогнозирование различных ситуаций, которые могут возникнуть в ходе судебного заседания; комплекс тактических приемов, используемых для их решения; построение версий обвинения; комплексное планирование деятельности по поддержанию государственного обвинения.

Ключевые слова: *уголовное дело, судебная политика, государственное обвинение, судебный процесс, прокурор.*

Introduction

The statement of the problem lies in the fact that the rights and legally protected interests of citizens and legal entities that have been violated are protected by considering and resolving criminal cases in courts in order to bring the perpetrators of the crime to justice. In the context of modernity and taking into account the time, the human rights functions of all state bodies, including the prosecutor's office, should be fully used.

The practical importance of the article lies in the fact that the ideas and conclusions formulated in it can be used with the correct interpretation of the rights and obligations of the institution of the prosecutor's participation in the criminal process and the analysis of the legal understanding of the judicial investigation in specialized scientific literature, etc.

Approach methodology. To achieve the set goal and objectives, the method of researching the subject of the article through the legislation of the Republic of Moldova, analysis of scientific opinions, publications on web pages or on paper in the form of manuals, articles, explanatory notes will be used.

Main ideas of the research

Part 1 of Article 124 of the Constitution of the Republic of Moldova [1] establishes that the prosecutor's office represents the general interests of society and protects the rule of law, as well as the rights and freedoms of citizens, manages and carries out criminal prosecution, and presents charges in courts in accordance with the law.

In a judicial investigation, the procedural position of each of the subjects contains its own characteristic features. Of course, the court is considered the central figure, but the prosecutor also has wide opportunities literally at all stages of criminal proceedings. In a judicial investigation, the main purpose of the prosecutor's activity is to maintain public prosecution.

The procedural status of the prosecutor in the criminal process, the forms and methods of his work, the tasks to be solved at a separate stage, and his capabilities and powers are defined in the Code of Criminal Procedure of the Republic of Moldova.

Thus, according to Article 51 of the Code of Criminal Procedure of the Republic of Moldova, "The prosecutor is a person who, within the limits of his competence, on behalf of the state, carries out criminal prosecution or, depending on the circumstances, leads it, represents the prosecution in court and performs other duties stipulated by this code. A prosecutor participating in criminal proceedings performs the functions of a public prosecutor." Article 51, part 3 of the Criminal Procedure Code of the Republic of Moldova "when exercising his powers in criminal proceedings, the prosecutor is independent and is subject only to the law. He must also comply with the written instructions of the higher prosecutor to eliminate violations of the law and omissions made in the conduct of criminal prosecution and / or management of it" [3].

Based on the indicated norms, indicating the status of the prosecutor among the parties and other participants in the criminal process, the legislation of the Republic of Moldova determines his status at the trial stage as a party to the prosecution. This role of the prosecutor is directly fixed in part 4 of article 51 of the Code of Criminal Procedure of the Republic of Moldova "during criminal proceedings, the prosecutor supports the prosecution on behalf of the state and presents at the court session the evidence base collected by the criminal prosecution authority".

Practice shows that the correct use of criminal and criminal procedural legislation while maintaining public prosecution, in the course of a judicial investigation is internally connected with the position of the prosecutor, and which can be attributed to emotional processes. As a result, the prosecutor, when appearing before the court, is obliged to be sure that the charge against the defendant is justified and, during the judicial investigation, not only is he obliged to re-evaluate the evidence collected, but also to arrive at other conclusions in the case, than those in the confirmed indictment. The ability to revise personal conclusions implies that the prosecutor has self-control, a desire to establish the truth, including if it is associated with the recognition of a personal mistake, this is a prerequisite for the successful fulfillment by the prosecutor of his duties.

The psychology of a prosecutor includes both the set of psychological methods that he/she is entitled to use in his/her work and his/her personal qualities, skills, experience and legal qualifications. All this cannot be dissociated from the culture of judicial and criminal procedure of the prosecutor.

In fact, it should be pointed out that, in judicial investigations, the public prosecutor shall prosecute before the court on the basis of equal rights with other participants in the proceedings (article 5 of the Law on the Public Prosecutor's Office RM [2], articles 53, 320 of the Code of Criminal Procedure) [3].

The prosecutor's function of maintaining public prosecution before the court is exercised throughout the proceedings, regardless of the position taken. In the said direction, he/she takes an active part in the examination of the evidence, gives the court his/her own opinions on the use of the criminal law and sanctions measures against the defendant. The prosecutor's own relations with the court are based on the strictest respect for the principles and bases of adversarial proceedings and equality of rights of the parties, the independence of judges and their subordination exclusively to the law.

Practice clearly demonstrates that the quality of the Public Prosecutor's presentation of the charges in the courts of the Republic of Moldova is dependent on a multitude of such cases. Sensible preparation of the prosecutor for the trial is considered a key issue.

Only a well-trained prosecutor can effectively support the prosecution and be responsive to the complex situations that arise in the course of the trial. Ignorance or poor knowledge of the criminal case is considered a prerequisite for the passive role of the prosecutor in bringing the public prosecution before the courts, which in turn eliminates its real influence on the course and outcome of the trial [4].

As with the prosecutor, in some nuances, the exercise of the functions of the prosecution falls to the court in one way or another, because the court itself, without the role of the prosecutor, has to examine the confirmation and examine the evidence incriminating the defendant in the commission of the crime. In the event that the court itself fails to make up for the shortcomings of the public prosecution, there may be judicial errors in sentencing. On the basis of this judgement, the high-quality preparation of the prosecutor for the trial is indisputable.

All cases go through the stage of preparation for trial, and the following components of preparation should be taken into account: the use of specific tactical methods for studying case materials; study of special literature, normative materials and judicial practice in relation to a certain category of cases; generalization and analysis of the materials of the criminal case; forecasting all kinds of situations that can appear during a court session, and a set of tactical methods used to solve them; building versions of the prosecution; comprehensive planning of work to maintain public prosecution [5].

A special place in the presented context is occupied by the possession of methods for studying the materials of a criminal case. At the same time, it should be pointed out that the problem of proper research of methods has so far practically not been covered in legal publications, therefore practical employees work in this direction instinctively and not always with the necessary efficiency.

It is absolutely indisputable that for high-quality preparation for a court session, the prosecutor, as a person supporting the state prosecution, needs to study all the materials of the criminal case, which, in fact, does not always take place in practice, but, as a rule, individualism is used, i.e., due to the personal properties of the prosecutor (memory, ability to analyze, logical thinking, forecasting).

Regarding the ways of studying the materials of a criminal case, two of the most charac-

teristic should be singled out: first, the study of the case materials begins with a decision to initiate a criminal case and lasts in the order in which it was systematized by the criminal prosecution officer or the prosecutor; the second - the study begins with the indictment, and then other materials are examined.

In the course of the study of the case, it is important to isolate from the entire complex of documents available in it, more significant ones, for reading and understanding of which more time should be allowed. Acquiring these skills requires not only vast experience in maintaining public prosecution, but also knowledge in the field of methods of investigating certain types of crimes and, in accordance with this, the features of maintaining public prosecution in different categories of criminal cases.

It is necessary to clearly understand what exactly should be analyzed when studying the materials of a criminal case.

The subject of such an analysis should include the following: the subject and limits of proof in a particular criminal case; evidence that reveals a person in the commission of a crime; evidence that is not in favor of the prosecution; information about the identity of the accused; normative material and judicial practice in a certain category of cases.

It is extremely important in the work of the prosecutor at the stage of pre-trial preparation to predict the likely situations that have every chance of appearing during the trial. It allows the prosecutor to actively influence the course of the trial, correctly understand what is happening in it, competently and in time to respond to the behavior of other participants in the process.

More common situations include: changing the testimony of the interrogated; failure to appear at the court session of specific persons; putting forward by the defendant a version of his own defense, which was not the subject of verification at the stage of criminal prosecution; application of petitions by various participants in the process [4]. The specified list of situations is not exhaustive, but is considered only the most common.

Planning the work of the prosecutor as a public prosecutor is a complex, ongoing and rather long process that begins from the moment the materials of the criminal case are studied and ends at the end of the court session. Therefore, planning is considered an individual and creative move, which, to a specific extent, depends on the prosecutor's own qualities, as well as on the category, volume and complexity of the criminal case. The prosecutor, being a public prosecutor, has the right to have several plans that help him solve various problems of maintaining the prosecution. The number of plans and their content depends on the volume of the criminal case, the number of persons involved in it, the type of crime and many other factors.

Among the types of plans, it is possible to note: a general plan for the participation of the prosecutor in the judicial consideration of a criminal case; a plan for the participation of the prosecutor in a separate judicial action; a prosecution plan for multi-episode and multi-person cases; plan-scheme of criminal connections; plan-calculation of civil claims in criminal proceedings; a plan that determines the order of study and research of evidence [4].

Planning for the maintenance of public prosecution is a multi-stage and complex process, the result of which are all kinds of plans drawn up by the prosecutor, depending on the number and nature of the tasks facing him. The plan is obliged to help its compiler freely navigate the materials of the criminal

case, and in the future become the basis for preparing a speech in the debate of the parties. Thus, the plan is constantly supplemented and adjusted during the trial.

The planning of the prosecutor's work in support of public prosecution must be based on the requirements of Article 344 of the Code of Criminal Procedure of the Republic of Moldova. Namely, part 1 of article 344 of the Criminal Procedure Code of the Republic of Moldova "a case received by the court during the day is distributed to the judge or, if necessary, to the composition of the court in a random order using an automated case management information program" and part 2 of article 344 of the Criminal Procedure Code of the Republic of Moldova " an extract from the automated case management information program on the random distribution of the case and the determination of the presiding court is attached to the case [3].

That is, no later than 3 days after the distribution of the case for trial, the judge or, depending on the circumstances, the composition of the court, having studied the materials of the case, sets the date for the preparatory hearing, which occurs no later than 20 days from the date of distribution of the case, with the exception of obvious crimes. A preparatory hearing in a case in which juvenile defendants or arrested persons are accused is held in an urgent and priority manner until the expiration of the period of arrest established earlier.

Also, the prosecutor is called upon to take measures to eliminate the facts of red tape in the consideration of criminal cases by the courts, i.e., take into account the norms of part 1 of article 20 of the Criminal Procedure Code of the Republic of Moldova "criminal prosecution and trial of the case are carried out within a reasonable time" [3].

After analyzing these norms, we can conclude that the preparation of the prosecutor is an ideal knowledge of the case materials. The success of the judicial consideration of the case largely depends on the preparedness of the prosecutor to participate in the process, on his assertiveness in establishing the truth and professional ability to take a position based on the law and proceeding from the materials of the case. An ideal knowledge of the materials of a criminal case is an obligatory application made to the prosecutor supporting the public prosecution. A thorough study by the prosecutor of the materials of the criminal case provides the basis for high-quality support of public prosecution.

The study of the materials of the criminal case should be organized in such a way that the prosecutor examines not only the main procedural documents, as is often the case in practice, but also familiarizes himself with all the materials of the criminal case without exception, including those that, at first glance, may seem him/her secondary. Having a concise presentation, and even verbatim excerpts from the testimony of the defendant, the victim and witnesses, the prosecutor has the opportunity, during the interrogation of these persons by the court and the participants in the trial, to compare their testimony with those that they gave at the stage of criminal prosecution or earlier held trial. The prosecutor is obliged to painstakingly study the materials of the criminal case, including in those cases when he exercised control over his prosecution or drew up an indictment.

If the prosecutor, going into the process, does not carefully examine the materials of the case, but begins to rely on his own resourcefulness, erudition or practical skill, he will never be able to superbly support the

public prosecution, including in the easiest criminal case. Ignorance of the materials of the case will always bind the prosecutor [5].

Taking into account the fact that in a judicial investigation the procedural position of the prosecutor in a judicial investigation is the support of public prosecution, this means that the prosecutor, in all cases and by all means, is obliged to support the prosecution. Supporting the prosecution, the prosecutor is guided by the requirements of the law and his/her own inner conviction, based on the consideration of all the events of the case.

The effectiveness of prosecutorial supervision at the stage of judicial investigation largely depends on the correct determination by the prosecutor him-/herself of his/her own procedural position in court. This question contains not only an abstract, but also a more practical meaning.

While maintaining public prosecution, he/she is not released from the obligation to monitor the observance of the rule of law when considering criminal cases by the courts. The maintenance of public prosecution and the exercise of supervision over the exact execution of laws must be regarded as a manifestation of the personal in general. State prosecution occupies a leading place among other types of charges in court proceedings. The procedural position of the prosecutor in the judicial stages is significantly distinguished from his/her position in the stage of criminal prosecution. In the trial, the prosecutor loses "power-administrative powers" and takes part in a different procedural capacity, namely as a public prosecutor - a party to the process [6].

The prosecutor, being a public prosecutor, acts on behalf of the state and, as being responsible to it, supports the prosecution in strict accordance with the law, within the limits of the law, and to the extent that it is confirmed by the judicial investigation.

One of the factors for improving the quality of maintaining public prosecution is the preparation of the prosecutor for the trial. Preparation for the trial contains a greater amount of personal, due to the personal properties of the accuser, such as memory, the ability to analyze, reason and predict. A special place here is occupied by the method of studying the materials of a criminal case. Only a well-informed and trained prosecutor is able to solve a whole range of problems that arise during the trial.

Pre-trial preparation is also important in the activities of the prosecutor. As a rule, at this stage, forecasting of probable situations that have every chance of appearing in the course of the trial is performed. Pre-trial preparation allows the prosecutor to actively influence the course of the trial, correctly understand what is happening in it, competently and in time to respond to the behavior of other participants in the process.

After analyzing some generally accepted norms of the criminal procedure legislation, it is possible to conclude that pre-trial training of the prosecutor is an ideal knowledge of the case materials. The success of the judicial consideration of the case largely depends on the preparedness of the prosecutor to participate in the process, on his/her assertiveness in establishing the truth and professional ability to take a position based on the law and proceeding from the materials of the case.

The preparatory part of the trial begins with the opening of the court session, and lasts until the beginning of the announcement of the indictment. The role and participation of the prosecutor at this stage is of great importance. A necessary factor in the

preparatory part of the court session is the application and resolution of motions.

In the preparatory part of the court session, the prosecutor gives an opinion on the issues that arise, responds to the petitions filed by the participants in the process, him-/herself makes various kinds of petitions, expresses his/her own opinion on the possibility of hearing the case in the absence of any of the persons summoned to the court session.

Only on condition that the prosecutor begins to painstakingly prepare for participation in the trial, checks the completeness, comprehensiveness and objectivity of the criminal prosecution, gives reasoned conclusions based on the law and the case materials, makes the necessary proposals on issues related to the preparation for the consideration of the case in court, assists the court in making a legitimate and reasonable verdict, ruling (decree) [5].

Judicial investigation is part of the trial, during which the court examines, with the participation of the parties, all the evidence that is important to justify the verdict. In this part of the trial, the foundation of the upcoming verdict is formed. As a rule, during the judicial investigation, the principle of competitiveness of the criminal process is clearly in place, which requires extensive knowledge from the public prosecutor. As a result, the legality and validity of the verdict is largely dependent on both the quality, completeness and objectivity of the judicial investigation, and the correctness of the study of evidence. The success of the judicial investigation in the case as a whole and the trial to a specific extent depend on the correctness of the procedure for examining evidence proposed by the prosecutor. This procedure must be such that in strict sequence and most effectively all the circumstances of the criminal case are clarified. Upon completion of the judicial investigation of the case and the trial as a whole, the court proceeds to listening to the judicial debate, consisting of the speeches of the prosecution and the defense, as well as the remarks that the participants in the process can exchange about what was said in the speeches. Judicial debates have a concrete impact on the drafting of judges' convictions, contribute more to the absolute assimilation of the case materials, both by the composition of the judges and those present in the hall. The accusatory speech ends the work of the prosecutor in the judicial investigation. At the same time, the speech of the prosecutor must be stated in a simple and clear language, understandable to persons, legally justified, the prosecutor brings into a strict system the evidence examined during the judicial investigation. According to its own legal essence and procedural significance, the speech of the prosecutor as an accuser is considered a legal act, with the help of which the prosecutor exercises his own powers in court.

The debate of the parties is that stage of the judicial investigation, in which the vigor of the prosecutor reaches its climax. It is considered the result of all his/her work in maintaining public prosecution. Only at this stage, the prosecutor has the opportunity to clearly and understandably state his/her position on a specific criminal case, which during the trial could only be manifested indirectly: through the raising of questions, the statement and approval of petitions, and the issuance of conclusions [5].

Conclusions

Ascertaining the results of this study, it is potentially possible to formulate an opinion

that the role of planning by the public prosecutor of his/her own activities is extremely important not only at the stage of the judicial investigation, but also in the debate. This is all more evident when preparing a speech on multi-volume or multi-episode criminal cases, when a significant number of persons are brought to criminal responsibility. The observance by the prosecutor of the lawful and ethical rules of conducting controversy allows him/her to solve the problems facing him/her at the stage of judicial debate, as well as while maintaining public prosecution as a whole.

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CZU 340.6
DOI https://doi.org/10.52388/2345-1971.2021.1.15

THE BARRIER BETWEEN IRRESPONSIBILITY AND RESPONSIBILITY. CONSIDERATIONS REGARDING THE FORENSIC PSYCHIATRIC EXPERTISEIN CRIMINAL LAW

Marcela SOMICU (BANU)
PhD student, Free International University of Moldova,
Chisinau, Republic of Moldova
e-mail: *marcela.banu@energie.gov.ro*
https//orcid.org/ 0000-0002-9675-8953

The irresponsibility from a medico-legal point of view is supported by the following criteria: non-formation of critical discernment; severe psycho-sensory or mental disability; altering the levels of elementary consciousness and operational logic; the psychopathological motivation of the moment of committing the antisocial act and of the deviant behavior in general; there is a direct causal link between the pathological personality traits and the crime committed; the forensic onset of mental illness; mental incapacity Analyzing all the above and referring to the topic studied in this paper, we can not fail to refer to how it contributes to the mental illness of a person who has committed a crime on determining his state of responsibility or irresponsibility, because this state determines whether or not the person is liable to criminal liability and, respectively, the punishment to be applied. In order to determine whether a person acted with discernment, ie he realized the degree of social danger posed by the act committed and was able to distinguish between what is permitted and what is not permitted by law, it is necessary the conclusions of some specialists.

Keywords: *forensic expertise, psychiatric expertise, responsibility, irresponsibility, mitigating circumstance, psychopathological deviance, psychomoral deviance.*

BARIERA ÎNTRE IRESPONSABILITATE ȘI RESPONSABILITATE. CONSIDERAȚII PRIVIND EXPERTIZA MEDICO-LEGALĂ PSIHIATRICĂ ÎN DREPTUL PENAL

Iresponsabilitatea din punct de vedere medico-legal este susținută de următoarele criterii: neformarea discernământului critic; psiho-senzorial grav sau handicapul mental; alterarea nivelelor de conștiință elementară și operațional logică; motivația psihopatologică a momentului săvârșirii actului antisocial și a comportamentului deviant în general; existența unei legături directe de cauzalitate între trăsăturile patologice ale personalității și infracțiunea comisă; debutul medico-legal al bolii psihice; incapacitatea psihică. Analizând toate cele spuse mai sus și raportând la tema studiată în prezentul articol nu putem să nu facem referire la faptul cum contribuie afecțiunea psihică pe care o are o persoană care a săvârșit o infracțiune asupra determinării stării sale de responsabilitate sau iresponsabilitate, fiindcă anume această stare determină dacă persoana respectivă este pasibilă sau nu de răspundere penală și, respectiv, pedeapsa care îi va fi aplicată. Pentru a stabili dacă o persoană a acționat cu discernământ, adică și-a dat seama de gradul de pericol social pe care îl prezintă fapta săvârșită și a putut să facă deosebire între aceea ce este permis și ceea ce nu este permis de lege, sunt necesare concluziile unor medici specialiști.

Cuvinte-cheie*: expertiză medico-legală, expertiză psihiatrică, responsabilitate, iresponsabilitate, circumstanță atenuantă, devianță psihopatologică, devianță psihomorală.*

LA BARRIÈRE ENTRE IRRESPONSABILITÉ ET RESPONSABILITÉ. CONSIDÉRATIONS SUR L'EXPERTISE MÉDICO-LÉGALE PSYCHIATRIQUE EN DROIT PÉNAL

L'irresponsabilité d'un point de vue médico-légal s'appuie sur les critères suivants: non-formation du discernement critique; handicap psycho-sensoriel ou mental grave; modifier les niveaux de consci-

ence élémentaire et de logique opérationnelle; la motivation psychopathologique du moment de commettre l'acte antisocial et du comportement déviant en général; il existe un lien de causalité direct entre les traits de personnalité pathologiques et le crime commis; l'apparition médico-légale de la maladie mentale; incapacité mentale En analysant tout ce qui précède et en se référant au sujet étudié dans cet article, on ne peut manquer de se référer à la façon dont il contribue à la maladie mentale d'une personne qui a commis un crime pour déterminer son état de responsabilité ou d'irresponsabilité, car cet état détermine si la personne est passible ou non d'une responsabilité pénale et, respectivement, de la peine à appliquer. Afin de déterminer si une personne a agi avec discernement, c'est-à-dire qu'elle a réalisé le degré de danger social posé par l'acte commis et a pu distinguer ce qui est permis et ce qui n'est pas permis par la loi, il faut les conclusions de certains médecins spécialistes.

Mots-clés: *expertise médico-légale, expertise psychiatrique, responsabilité, irresponsabilité, circonstance atténuante, déviance psychopathologique, déviance psychomorale.*

БАРЬЕР МЕЖДУ ВМЕНЯЕМОСТЬЮ И НЕВМЕНЯЕМОСТЬЮ. РАЗМЫШЛЕНИЯ ОТНОСИТЕЛЬНО ПСИХИАТРИЧЕСКОЙ СУДЕБНО-МЕДИЦИНСКОЙ ЭКСПЕРТИЗЫ В УГОЛОВНОМ ПРАВЕ

Невменяемость с точки зрения судебно-медицинской экспертизы подтверждается следующими критериями: отсутствие критической проницательности; тяжелая психосенсорная или умственная отсталость; изменение уровней элементарного сознания и операционной логики; психопатологическая мотивация момента совершения антиобщественного деяния и девиантного поведения в целом; наличие прямой причинно-следственной связи между патологическими особенностями личности и совершенным преступлением; судебно-медицинская экспертиза психических заболеваний; умственная недееспособность. Анализируя все вышеперечисленное и обращаясь к теме, изучаемой в данной статье, мы не можем не сослаться на то, как это способствует психическому заболеванию человека, совершившего преступление, чтобы определить его состояние вменяемости или невменяемости, потому что это состояние определяет, подлежит ли или нет лицо уголовной ответственности и наказанию, соответственно. Чтобы определить, действовал ли человек рассудительно, то есть осознавал ли степень общественной опасности, которую представляет совершенное действие, и мог ли различать то, что разрешено, и то, что не разрешено законом, необходимы выводы некоторых врачей-специалистов.

Ключевые слова: *судебно-медицинская экспертиза, психиатрическая экспертиза, вменяемость, невменяемость, смягчающие обстоятельства, психопатологическое отклонение, психоморальное отклонение.*

Introduction

Psychiatric forensic probation during the evolution of human society has experienced great oscillations being organically linked to the social structure of times and states and implicitly to the evolution of legal concepts, as evidenced by a series of codes and laws existing long before our era. Lex Cornelia mentions the attenuation or even non-existence of liability in cases of mental disorders, and Lex Aquilla required the examination by a doctor in cases of simulated diseases.

In our country, in the pages of the Romanian Textbook from the royal rules of Vasile Lupu (Iași, 1646) and then in the Correction of the Law or the Great Rule of Matei Basarab (Târgoviște, 1652), references are made to the mental state of those examined: insanity could be steady, intermittent and simulated, and drunkenness if it proved to be a witness was a mitigating circumstance.

Thus, responsibility can be defined as the psychological state of the person who has the ability to understand the prejudicial nature of the act, as well as the ability to manifest his will and direct his actions.

In Article 21of the Penal Code (PC) the responsibility is laid down as a sign characterizing the natural person as a subject of the offense, and in Article 22 of PC the notion of

responsibility is given: *"responsibility is the psychological condition of the person who has the ability to understand the injurious character of the deed, as well as the ability to manifest his/her will and direct his/her actions"*.

According to the provisions of art. 23 of the Criminal Code, irresponsibility is a cause that removes the criminal nature of the deed and which provides in: para. (1) *"a person who, during the commission of a prejudicial act, was in a state of irresponsibility, i.e., could not be held accountable for his/her actions or inactions or could not direct them due to an illness, is not liable for criminal liability, chronic mental illness, a temporary mental disorder or other pathological condition"*. Thus, the crime will not have a criminal if it has a mind alienated from judgment (mentally insane), as a result of the intervention of a mental illness or deviance.

Materials used and methods applied. In drafting this paper, the international, regional and national regulatory framework that ensures the legal protection of persons with psychopathological deviance, psycho-moral deviance and the correct assessment of the barrier between irresponsibility and responsibility and those on psychiatric forensic expertise in the field of criminal law. The methods were used: logic, comparative, analysis and synthesis, systemic.

Obtained results and discussions

Among the obligations that the judicial bodies have regarding the knowledge of the offender's person are those that refer to the mental deficiencies of the investigated person, which include both psychopathological and psycho-moral deviance, criminal justice being often confronted with the need to distinguish between the two, either in the field of solving problems related to criminal liability and determining the degree of guilt, or in the field of taking protective measures, even against persons who are not guilty of committing crimes, but are socially dangerous due to mental illness.

Some authors argue that if a person commits an irresponsible crime, the issue of treatment does not fall to criminology, but only to medicine. Criminology must deal with intellectually responsible individuals who commit crimes. The answer to the question "why does a madman commit antisocial acts?" should be given by psychiatry, not criminology.

We do not agree with this statement, because the mentally ill, who due to the serious illnesses they suffer from, have a total lack of discernment and due to their mental state will not be able to be prosecuted and therefore cannot become criminals in the criminal sense of the term, no matter how serious the deed they committed, and the deeds they commit, they have been, since the early stages of criminology, a priority concern for specialists, and research in this field is always relevant.

A new notion has been introduced in the new Criminal Code of the Republic of Moldova, namely that of reduced liability. Thus, art.231 of the Criminal Code of the Republic of Moldova (1) stipulates that: *"the person who committed a crime as a result of a mental disorder, ascertained by medical expertise performed in the established manner, and the legality of his/her actions or he/she could not fully direct them is liable to reduced criminal liability"*. Therefore, art. 76 para. (1) letter d) provides for reduced liability as a mitigating circumstance in case of committing an offense.

Thus, there is a need to perform forensic psychiatric expertise, which is a specific activity of the forensic institution, which consists in investigating the mental state, providing justice with scientific evidence in establishing responsibility (in other words answering the question whether the person acted or not discerning).

In order to understand this definition more clearly, it is necessary to clarify the notion of

discernment (psychiatric term), which is the ability of a person to realize the deeds committed and their consequences, to be able to distinguish between good and evil, having the representation of the negative consequences of antisocial acts. In fact, discernment is a synthesis of personality and consciousness when performing an action. Thus, discernment becomes the medical criterion of the person's responsibility and the main point of the psychiatric-legal expertise, on which depends the establishment with certainty of the subjective side of the crime committed by him.

The criminal prosecution bodies, as well as the courts are obliged, when they have doubts about the discernment, the mental health of the person who committed a criminal act, to submit it to an examination within the psychiatric forensic examination. If for most of the deeds punishable by the criminal law, the performance of the psychiatric forensic examination is left to the discretion of the prosecutor or the court, for some serious crimes, the performance of this expertise is mandatory. Thus, according to the provisions of art. 143 of the CPC (Criminal Procedure Code) of the Republic of Moldova, the expertise is mandatory for the finding: par. (3) the mental and physical condition of the suspect, the accused, the defendant - in cases where there are doubts about their state of responsibility or their ability to independently defend their rights and legitimate interests in criminal proceedings.

Thus, the forensic psychiatric expertise has its utility in several branches of law, being carried out in the following situations: in the case of the crime of particularly serious murder; when the criminal investigation body or the court has doubts about the mental state of the accused / defendant; juvenile offenders between the ages of 14 and 16; in infancy (examination of the mother); for the establishment of medical safety measures; for lifting these safety measures proposed by a previous forensic examination.

The objectives for which the psychiatric forensic examination is recommended:

- Whether or not the person with the condition has mental disorders and their current diagnosis;
- Exclusion of simulating or concealing a mental illness;
- Current mental capacity and whether the subject can be researched or judged;
- Mental capacity at the time of the act;
- Appreciation of discernment towards the deed committed;
- Recommendation of medical safety measures or educational measures provided by the Criminal Code, depending on the prognosis of the mental disorders found and the assessment of their degree of social danger.

The expertise is performed after the perpetrator has been admitted to a specialized clinic, where he/she is subjected to clinical and laboratory examinations, which provide specialists with the necessary elements to establish the presence or absence of discernment, on the date when the perpetrator committed the crime.

In order to better understand what is the forensic psychiatric expertise, we need to make some clarifications about how it is carried out.

A psychiatric forensic examination cannot be reduced to formulating or stating a diagnosis, but presupposes a social-legal purpose, which gives it its probative value, its conclusion.

Based on the provisions of current legislation and the needs of legal practice and forensic assistance, the objectives of forensic psychiatric expertise are the following:

a) specifying a person's mental health (normality);

b) complex characterization of the personality of the expert individual with the specification of its features both in connection with the psychiatric diagnosis and from a socio-psychological point of view;

c) establishing the causal link between the features of this personality and the constitutive elements of the criminal or antisocial act committed.

The neuropsychiatric examination that is performed in the situation when the offender was discovered immediately after committing the crime, is the first stage of the psychiatric examination. This is done by a forensic commission and two psychiatrists.

Thus, according to the provisions of the Regulation of activity of the psychiatric hospital, in art. 31 states that: *"the obligatory condition for the hospitalization of persons in the psychiatric hospital for examination and treatment is the expression of free consent or the patient's request" (see annex no. 1).* Hospitalization in the psychiatric hospital (ward) is performed only by the psychiatrist. If the person to be hospitalized has not reached the age of 18 or according to his / her mental state is not able to express his / her free consent, the admission for hospitalization can be received from the legal representative, personal representative or from the court as the case may be. In the same order of ideas, we can mention the fact that art. 30 stipulates: *"the hospitalization in the psychiatric hospital of the persons referred to the inpatient legal psychiatric expertise and for the application of the coercive measures with medical character is carried out only by the decision of the courts".*

This exam should be as complete and thorough as possible. The result of such an examination becomes more than necessary, as it provides the investigating body or the prosecutor with the necessary data to enable him to decide whether to continue the investigation against the accused / defendant or whether it is necessary for him to be hospitalized first in a profile hospital.

The psychiatric forensic report must have the following components:

1. the objectives of the expertise in a specific case;
2. documents consulted (ordinance, case file, social inquiry, current hospitalization form or outpatient examinations, hospitalization form);
3. the deed committed (type of deed, reasons, motive, circumstances in which it was committed, manner of commission, post-de facto behavior); biological, psychological circumstances;
4. personal history (schooling, profession, military status), pathological history, behavioral history, criminal history;
5. social environment;
6. the forensic expertise itself (mental examination, psychological examination, special paraclinical investigations, regarding the deed - admits it or not, sentimental guilt, discussion of the case - exceptionally, the conclusions).

This type of expertise is part of the category of individual expertise, provided in art. 154 of the Law on judicial expertise, ethno-scientific and medico-legal findings, which stipulates: *"individual expertise is considered research on a specific case, which is carried out by an expert and ends with the preparation of a report where the conclusions of the expert are stipulated".*

The psychiatric expertise of criminals with mental deficiencies: oligophrenics, idiots, imbeciles, cretins, etc., does not raise special problems if there is sufficient documentation, these being detected and diagnosed early (kindergartens, schools, army). A more special problem is posed by those with much lighter forms, especially borderline cases, some of which are also recoverable by directing them to specialized institutions.

Depending on the outcome of the psychiatric report of medical forensic expertise, the medical constraint measures, which according to Article 99 may be either to be admitted to a psychiatric institution with regular supervision or to be admitted to a medical institution with rigorous supervision, will be applied. In this respect, Article 13(1) of the

Law on psychiatric assistance of 16.12.1997 States: *"The person suffering from mental disorders who committed actions dangerous to society shall be applied coercive medical measures on the basis of the court judgment, according to the grounds and in the manner established by the Criminal Code and the Code of Criminal Procedure"*. In order for the judgment to be complete with regard to the application of these coercion measures, the judge must take into account the provisions of Article 22 of the judgment of the Court of Justice of the Republic of Moldova on the observance of the rules of criminal procedure when adopting the judgment which provides: "*for the adoption of the sentence as regards to the person who committed a social dangerous act in a state of irresponsibility or who had mental disorders after the offense, who lacks the possibility of realizing and controlling his/her actions, it must be clearly established at the court that the social dangerous act, provided by the special part of the PC, it was committed by the person concerned. The court must assess this socially dangerous act, verify and assess the evidence presented in the investigation of the question on the mental capacity of this person, the nature and degree of mental disorders at the time of the crime and during the examination of the case in court. If the court comes to the conclusion that this person has committed the social act - provided by the criminal law in a state of irresponsibility, it will solve the issue of applying a coercive measure of a medical nature* ".

These safety precautions apply to people who have committed crimes and are mentally ill or abnormal:

a) the obligation to receive medical treatment applies to persons who have committed crimes under the rule of a disease or a chronic intoxication by alcohol or narcotics and who present a social danger of committing new crimes. The obligation to receive medical treatment lasts until recovery, the convict is obliged to carry out the treatment, and if he/she evades, this measure is replaced by medical hospitalization, which means deprivation of liberty.

b) a special measure of safety is medical admission, in which case, under the same conditions (committing a crime, social danger), the perpetrator is a mentally ill or substance dependent, a person who is not liable for criminal proceedings and who is being admitted to a specialized health institution, where he/she will stay until their recovery.

Conclusions

From a medico-legal point of view, irresponsibility is supported by the following criteria: non-formation of critical discernment; severe mental or psycho-sensory disability; altering the levels of basic and operationally logical consciousness; the psychopathological motivation of the moment of committing the antisocial act and of the deviant behavior in general; there is a direct causal link between the pathological personality traits and the crime committed; forensic onset of mental illness; mental incapacity.

Although mental deficiencies are in the specific field of psychiatry, criminology is also of interest in their study, because these deficiencies revolve around the lawful or illicit criminal. We share this view, as it is already well known that mental deficiencies greatly influence the personality of the offender and even if he/she is irresponsible and not liable to criminal punishment, he/she is still a danger to society.

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CZU 343.81(477)
DOI https://doi.org/10.52388/2345-1971.2021.e1.12

FORMATION OF THE PENITENTIARY SYSTEM OF SOVIET UKRAINE (FIRST HALF OF THE 20th CENTURY)

Irina LESI
Doctor of Law, Associate Professor, National Aviation University,
Kiev, Ukraine
e-mail: *iryna.les@npp.nau.edu.ua*
https://orcid.org.//0000-0003-0596-3749

The process of organizing and becoming a system of execution of criminal penalties in Soviet Ukraine has been investigated since the Education of the Ukrainian SSR until 1930 - the beginning of the 1950s.; marked the main stages of the development of the state; The main regulatory acts of the structural and organizational activities of the penitentiary system are analyzed. In the 1920s. The Soviet penitentiary system was considered as a composite punitive system of the state and an effective means of combating the «class enemy». At the same time, the system of correctional institutions in Ukraine has not yet been considered as a means of severe punishment in the conditions of isolation from society, and it was also interpreted as an integral part of the condemnation system of convicts in social waste. The system of execution of criminal penalties to which correctional labor camps and general places of detention were determined. Independent subsystems were considered prison institutions (ordinary and investigative prisons), as well as labor colonies for minors and children's educational colonies. It has been established that under the conditions of Stalinism, an extensive network of the criminal executive system was a kind of foundation of totalitarian regime, was in an organic relationship with the administrative command system. The state administration of criminal and executive institutions in the post-war years carried out, and based on the principles of strict control of various departments of the NKVD, NKGB, MJ, Ministry of Internal Affairs.
Keywords: *criminal enforcement system, prison, camp, Gulag, Soviet Ukraine.*

FORMAREA SISTEMULUI PENITENCIAR AL UCRAINEI SOVIETICE (PRIMA JUMĂTATE A SECOLULUI XX)

Prezentul articol examinează procesul de organizare și formare a sistemului de executare a pedepselor penale în Ucraina sovietică de la momentul formării RSS Ucrainene până în 1930 - începutul anilor 1950. Sunt conturate principalele etape ale dezvoltării statului. Autorul a analizat principalele acte juridice normative ale activităților structurale și organizatorice ale sistemului penal. În anii 1920 sistemul penitenciar sovietic a fost considerat ca o parte integrantă a sistemului punitiv al statului și un mijloc eficient de luptă contra „inamicului de clasă”. În același timp, sistemul instituțiilor de muncă corecționale din Ucraina nu a fost încă considerat ca un mijloc de pedeapsă severă în condiții de izolare de societate, dar a fost interpretat, cel mai probabil, ca o parte integrantă a sistemului de reeducare a condamnaților în condiții de muncă social utilă. Este determinat sistemul de organisme pentru executarea pedepselor penale, care a inclus lagărele de muncă corective și locurile generale de detenție. Instituțiile de tip penitenciar (închisorile ordinare și preventive), precum și coloniile de muncă pentru minori și coloniile educaționale pentru copii au fost considerate subsisteme independente. S-a stabilit că, în condițiile stalinismului, rețeaua ramificată a sistemului penitenciar era un fel de fundament al regimului totalitar, se afla într-o relație organică cu sistemul administrativ de comandă. De asemenea, se ia în considerare gestionarea de către stat a instituțiilor penale în anii postbelici, efectuată și bazată pe principiile controlului strict de către diferite departamente - NKVD, NKGB, Ministerul Justiției, Ministerul Afacerilor Interne.
Cuvinte-cheie: *sistemul de executare penală, închisoare, lagăr, Gulag, Ucraina Sovietică.*

FORMATION DU SYSTÈME PÉNITENTIAIRE DE L'UKRAINE SOVIÉTIQUE (PREMIÈRE MOITIÉ DU 20e SIÈCLE)

Le processus d'organisation et de devenir un système d'exécution des sanctions pénales dans l'Ukraine soviétique a été étudié depuis l'éducation de la SSR ukrainienne jusqu'en 1930 - début des années 1950.; marqué les principales étapes du développement de l'État; Les principaux actes réglementaires des activités structurelles et organisationnelles du système pénitentiaire sont analysés. Dans les années 1920. Le système pénitentité soviétique était considéré comme un système punitif composite de l'État et un moyen efficace de lutter contre l'ennemi de la classe. Dans le même temps, le système d'institutions correctionnelles en Ukraine n'a pas encore été considéré comme un moyen de punition sévère dans les conditions d'isolement de la société, et il a également été interprété comme faisant partie intégrante du système de condamnation des condamnés dans les déchets sociaux. Le système d'exécution des sanctions pénales auxquels des camps de travail correctionnels et des lieux de détention généraux ont été déterminés. Les sous-systèmes indépendants ont été considérés comme des institutions pénitentiaires (prisons ordinaires et d'investigation), ainsi que des colonies de travail pour les mineurs et les colonies éducatives pour enfants. Il a été établi que dans les conditions du stalinisme, un vaste réseau du système de direction criminel était une sorte de fondement du régime totalitaire, était dans une relation organique avec le système de commandement administratif. L'administration de l'État d'institutions criminelles et exécutives dans les années d'après-guerre effectuées et fondée sur les principes de contrôle strict de divers départements de la NKVD, NKGB, MJ, Ministère des affaires intérieures.

Mots-clés: *système exécutive criminelle, prison, camp, Gulag, Ukraine Soviétique.*

СТАНОВЛЕНИЕ УГОЛОВНО-ИСПОЛНИТЕЛЬНОЙ СИСТЕМЫ СОВЕТСКОЙ УКРАИНЫ (ПЕРВАЯ ПОЛОВИНА XX ВЕКА)

В данной статье исследован процесс организации и становления системы исполнения уголовных наказаний в советской Украине со времени образования УССР до 1930 г. - начала 1950-х гг. Обозначены основные этапы развития государства; проанализированы главные нормативно-правовые акты структурно-организационной деятельности уголовно-исполнительной системы. В 1920-е гг. советская пенитенциарная система рассматривалась как составная карательной системы государства и действенное средство борьбы с «классовым врагом». В то же время, система исправительно-трудовых учреждений в Украине еще не рассматривалась как средство сурового наказания в условиях изоляции от общества, а трактовалась, скорее всего, как неотъемлемая часть системы перевоспитания осужденных в условиях общественно полезного труда. Определена система органов исполнения уголовных наказаний, к которой относились исправительно-трудовые лагеря и общие места заключения. Самостоятельными подсистемами считались учреждения тюремного типа (обычные и следственные тюрьмы), а также трудовые колонии для несовершеннолетних и детские воспитательные колонии. Установлено, что в условиях сталинизма разветвленная сеть уголовно-исполнительной системы была своеобразным фундаментом тоталитарного режима, находилась в органической взаимосвязи с административно-командной системой. Рассмотрено также государственное управление уголовно-исполнительными учреждениями в послевоенные годы, осуществляемое и основанное на принципах жесткого контроля со стороны различных ведомств - НКВД, НКГБ, МЮ, МВД.

Ключевые слова: *уголовно-исполнительная система, тюрьма, лагерь, ГУЛАГ, Советская Украина.*

Introduction

For the development of Ukraine as a democratic and legal state, the "Europeanization" of the domestic penitentiary system is of great importance. Therefore, in order to effectively implement the planned reforms in the system of execution of criminal penalties and bring them in line with international

legal standards, it is important to study the historical development, including the Soviet penitentiary system, its specifics and legislative framework.

The historical experience of the execution of criminal penalties and their practical implementation is of scientific interest from the point of view of further development and improvement of the norms governing the execution and serving of sentences.

The purpose of the article is, first of all, to explore the process of organizing the Soviet system of execution of criminal penalties in Ukraine from the time of the formation of the Ukrainian SSR-Ukrainian SSR until 1930 - early 1950s.

State of the researched issue. The functioning of the system of bodies that executed sentences in the form of deprivation of liberty, in the historical and legal aspect, was studied in pre-revolutionary, Soviet and post-Soviet legal literature. This problem was thoroughly covered in the works of pre-revolutionary authors S.V. Poznysheva, M.S. Tagantseva, I.Ya. Foinitsky.

In the Soviet period, researchers of corrective labor law did not study the organizational and legal issues of managing places of deprivation of liberty, paying attention to the process of executing punishment. This period is associated with the names of such researchers as M.M. Gernet, A.I. Zubkov, V.D. Sysoev, as well as individual Ukrainian scientists (Yu. Frolov), who studied the history of the development and reform of the penitentiary system.

The post-Soviet period aroused great interest in the problems of the Soviet punitive-repressive system both among foreign (E. Eppbom) and among domestic researchers. In particular, the Ukrainian post-Soviet scientific literature of these problems is primarily represented by the works of "pure" historians (I. Bilas, T.D. Demyanchuk, I. Derevyanny, V.M. Nikolsky, A.P. Sushchuk, etc.), less often - by the works of historians of law - I.V. Ivankova, O.B. Ptashinsky, V.V. Rossikhina, D.V. Yagunov. However, the need for historical and legal knowledge of our past necessitates further scientific research in the field of the history of the domestic penitentiary system.

Statement of the main provisions

Having come to power in 1917, the Bolsheviks abandoned the previous, Russian-imperial penitentiary system, and the development of a new, Soviet system for the execution of criminal penalties, that is, the penitentiary system, began on a fundamentally new basis in accordance with the needs of the proletarian government.

Researchers divide the process of development of the Soviet penitentiary system into several periods [1, pp. 12-13]. The first one began in October 1917. At this stage, the places of detention were under the jurisdiction of the People's Commissariat of Justice (hereinafter referred to as the NKJ). Only some functions were concentrated in the NKVD. On December 12, 1917, a department of prison administration was created as part of the NKJ, and on January 6, 1918, a prison collegium.

The temporary instruction of the NKJ "On deprivation of liberty as a measure of punishment and on the procedure for serving it" (July 23, 1918) divided all places of deprivation of liberty into male and female, and according to their purpose - into: a) general places of detention (prisons); b) reformers and land colonies as punitive and educational institutions (for young criminals); c) probationary institutions for persons in respect of whom there are grounds for weakening the regime or early release; d) punitive medical institutions; e) prison hospitals.

The reform of the penitentiary system was also associated with the creation of the Central Punitive Department within the NKJ. The

relevant provincial departments were subordinated to him. The latter created the so-called. distribution commissions, which not only distributed convicts according to categories, but also ensured the implementation of the principle of collective management of places of deprivation of liberty. From the moment when the penitentiary functions of the NKJ were actually completely taken over by the NKVD (December 6, 1922), the penitentiary system became an integral part of the punitive system of the state and a means of combating the "class enemy". The latter circumstance (according to A. Ptashinsky) marked the beginning of the second period in the formation of the penitentiary system [1, p. 13]. Then, as part of the NKVD, the Main Directorate of Places of Detention was created. The management of local correctional institutions was entrusted to the provincial departments, which acted as subdivisions of the provincial executive committees.

The legal basis for the development of the Soviet penitentiary system since the second half of the 1920s. became the approved VUTsIK (The All-Russian Ukrainian Central Executive Committee) correctional code of the Ukrainian SSR (October 27, 1925). It consolidated the basic principles of corrective labor law: the rejection of prison-type places of detention (imprisonment as a form of punishment was abolished back in 1920); development of a network of colonies; compulsory work of convicts; organization of the regime of serving sentences on humane principles; the application of a progressive system of punishment (that is, a gradual easing of the regime for those who are corrected); strict isolation of the most dangerous criminals. They were managed by the NKVD of the Ukrainian SSR, which included the Department of Correctional Institutions.

In 1927, the Directorate consisted of the following inspections: administrative and penitentiary; production; financial and economic; cultural and educational; escort guards [2, pp. 8-9]. Among the places of detention provided for by the code, institutions in which convicts were kept without strict isolation from society prevailed. Labor was proclaimed the leading principle of re-education in such institutions. These included: houses of pre-trial detention (for those who were under investigation), houses of forced labor (DOPRe, - from the Russian house of public forced labor), agricultural labor colonies, the so-called reformatory for juvenile delinquents [3, p. 111].

Along with the reformatories (according to A. Oleinik), labor communes of the OGPU and the People's Commissariat of Education of the Ukrainian SSR have been operating in Ukraine since 1924 [2, p. 9]. These were boarding schools. Children between the ages of 10 and 18, detained for begging, street children and delinquents, were sent to the communes. The activity of just such communes is associated with the name of A.S. Makarenko. And only one type of institutions for the execution of punishments - special purpose detention centers - provided for deprivation of liberty in conditions of strict isolation of persons convicted of the most serious crimes, including all crimes committed by class hostile elements [3, p. 112]. A characteristic feature of the definition of the regime of serving a sentence was the dominance of the class principle.

Organizational and structural changes in the penitentiary system during the period of Stalinism directly depended on the content of national tasks. Under the influence of the "great turning point", in the late 1920s - early 1930s, the main priorities of the corrective labor policy in the USSR began to change: the principles of correction and re-education of convicts in conditions of socially useful labor were replaced by the principles of applying severe punishment for committing a crime in isolation from society. This pro-

cess was accompanied by the reorganization of the system of bodies for the execution of criminal penalties in the direction of tightening the conditions of detention of convicts, on the one hand, and the transformation of this system into a means of fulfilling national economic tasks, on the other.

Instead of the previously accepted division of deprivation of liberty and serving sentences in severe isolation and without it, starting from 1930, it was established that criminal punishment in the form of deprivation of liberty could take place in forced labor camps (created in remote areas of the USSR in accordance with the decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the Ukrainian SSR dated March 15, 1930) or in general places of detention. Special purpose detention centers and forced labor houses (DOPRe) were subject to liquidation.

Since there were no concentration camps on the territory of Ukraine at that time, the only type of places of deprivation of liberty in the republic remained corrective labor colonies. They served sentences convicted for up to three years (in the early 1930s in the camps, from three to the maximum - ten years). Independent subsystems were prison-type institutions (fixed-term and remand prisons), as well as labor colonies for minors and children's educational colonies.

During the 1930s in the USSR, the formal principles of penitentiary policy were grossly violated. A. Ptashinsky draws attention to the fact that in 1935 the division of prisoners according to the degree of social danger was abolished: they differed only by gender and were divided into those who adhere or do not comply with the regime established in places of detention [1, p. 16].

By a decree of the Central Executive Committee of the USSR of October 2, 1937, the maximum limit of punishment in the form of imprisonment was increased to twenty-five years. Parole was abolished, supervisory commissions that controlled places of deprivation of liberty ceased to function, prosecutorial supervision over these institutions was weakened.

Corrective labor camps became the main place of detention for counter-revolutionary crimes. Being under the jurisdiction of the all-Union OGPU-NKVD, they acted solely on the basis of departmental regulations. In particular, the regime of detention in them was regulated by the Regulations on corrective labor camps approved by the Council of People's Commissars of the USSR (April 7, 1930).

The leadership of April 25, 1930 was carried out by the Directorate of Camps of the OGPU of the USSR (since October 1930 - the Main Directorate of Camps), and since 1934 - the Main Directorate of Camps of the NKVD of the USSR (Russian - GULAG). Prison-type institutions (ordinary and investigative prisons) were created and liquidated only by order of the People's Commissar of the NKVD of the USSR. They were mainly managed by the Main Prison Directorate (GTU) created as part of the NKVD of the USSR in early 1939. Unlike the Main Directorate of Camps (GULAG), the GTU managed only those areas of prisons that provided security, isolation, a regime for keeping prisoners and training prison guards [4, p. 739].

The regime of detention in ordinary and remand prisons was regulated by the Regulations on the prisons of the NKVD for those under investigation and the prison of the Main Directorate of State Security (GUGB) for convicts (both 1939). The latter divided all prisons into five categories.

The main and most common category of prisons in the USSR were general prisons for holding untried prisoners. In these institutions, persons under investigation and defendants were kept by decision of the investigative body or court as a preventive measure, detention.

Another category of prisons for holding untried prisoners were the internal prisons of the NKVD of the republics and the UNKVD of the regions. They were usually organized only in the buildings of the NKVD and the UNKVD of the republics and regions, as well as in the buildings of large city departments of the NKVD. As an exception, it was allowed to organize departments of internal prisons outside the buildings of the NKVS-UNKVD in cases where the size of the buildings did not allow increasing the capacity of the internal prison to the required limit of prisoners. In internal prisons and their branches, only prisoners under investigation and defendants were kept, who were accused of counter-revolutionary crimes, the investigation of which was carried out by state security agencies.

The third category is the central prisons of the GUGB for the detention of persons under investigation. These prisons were directly subordinated to the General Directorate of Prisons.

The fourth category is the prisons of the GUGB for the detention of convicted especially dangerous state criminals. They also reported directly to the General Directorate of Prisons.

The fifth category is the special prisons of the NKVD of the USSR and the UNKVD for the detention of convicted prisoners used for special purposes.

The location of the prisons was conditioned by the location of the respective industrial enterprises and research institutes where the prisoners (specialists and scientists) worked [4, p. 740]. They were actively used in the USSR in the 1920s and 30s, although the forced treatment and isolation of “rebels” in psychiatric hospitals did not receive wide publicity.

Until 1945, the functions of prisons, including for Ukrainian political prisoners, were performed by separate sections of ordinary psychiatric hospitals of the People’s Commissariat of Health. In connection with the formation on February 3, 1941 of two departments - the NKVD of the USSR and the NKGB of the USSR - part of the prisons that had the status of political ones, such as, let’s say, internal, Lefortovskaya, Sukhanovskaya and others, according to the order of the NKVD / NKGB No. 03/0115 of June 4, 1941 again returned to the jurisdiction of the NKVD, where they were managed by the 2nd accounting and archival department of the NKGB [5, p. 483].

Order No. 00212 dated February 26, 1941, the Main Prison Directorate of the NKVD of the USSR was reorganized into the Prison Directorate with branches in the structure of the regional UNKVD. And by order of December 3, 1941, the NKVD and the NKGB of the Ukrainian SSR, all prisons of the general type of the NKVD were transferred to the subordination of the NKVD of the Ukrainian SSR. Investigative prisons remained in the structure of the NKVD of the Ukrainian SSR, including all prisons on the territory of the western regions [5, p. 483].

An important legal act in the context of the structural and organizational activities of the pre-war penitentiary system was the order of the People’s Commissar of Internal Affairs of the USSR dated May 28, 1941, No. 00204 “On the introduction of a unified registration system for criminals in internal prisons and internal prison cells of the NKGB- UNKGB” [6, pp. 179-189]. According to this order, the re-registration of all prisoners who were in NKVD prisons, forced labor camps and colonies, internal prisons (IP) and internal prison cells (IPC) of the NKVD-UNKGB was provided for. The order provided for the Instruction on the re-registration of prisoners. From the day of re-registration, it was planned to introduce a single form of registration and accounting of arrested criminals. It was necessary to add: a personal file, a questionnaire, an account card for the centralized registra-

tion of criminals (form No. 1), a fingerprint card, a signal photograph. Control over the conduct of re-registration relied on the 1st special department of the NKVD-UNKVD. According to the new registration rules, each new arrested and convicted person taken under arrest in the courtroom, no later than 12:00 from the moment of placement in prison, had to be registered, fingerprinted and photographed. At the end of re-registration, an act was drawn up on the completion of re-registration, where the number of detainees was noted, which was submitted in daily reports on the movement of prisoners. Such an act in each prison was drawn up in three copies: the first copy, along with registration cards of Form No. 1, was sent to the 1st Special Department of the NKVD - UNKGB, the second - to the 2nd Department of the NKVD - UNKGB, and the third remained in the prison file.

With the beginning of the German-Soviet confrontation, all places of deprivation of liberty were evacuated from the territory of Ukraine and other western regions of the USSR due to possible occupation. A certain part of persons convicted of minor crimes were released from places of deprivation of liberty and sent to the front.

After the end of the war, Ukraine had to recover. It was also necessary to restore the penitentiary system. Its structure at that time included: **1**. correctional labor colonies for the maintenance of adults sentenced to imprisonment for short periods; **2**. Separate camps for the maintenance of adults sentenced to imprisonment for a term of three years or more; **3**. labor colonies for juveniles sentenced to deprivation of liberty; **4**. prisons for those sentenced to imprisonment; **5**. transit points.

In the first post-war years, special psychiatric hospitals of the system of the Ministry of Internal Affairs of the USSR also launched their activities "on the basis of appropriate medical institutions" [7, p. 440]. Until 1948, there were also penal units (later the establishment of a strict regime), which contained malicious violators of the order of serving sentences. In addition, on the territory of Ukraine in the first post-war years there were several camps directly subordinate to the NKVD of the USSR. To control their activities in the Ministry of Internal Affairs of the Ukrainian SSR, a camp department was created (it controlled the issues of protection and the regime of detention of convicts). After the completion of restoration work at the mines and factories of the Donetsk and Lugansk regions and the construction of the Moscow-Simferopol highway, these camps were disbanded, and the camp department ceased to exist.

In the first post-war years, two types of regimes were established in all forced labor camps: general and enhanced. Convicted for counter-revolutionary crimes, banditry, robbery, escape from places of detention, as well as repeat offenders, were held in an enhanced regime.

In 1944, a special service for monitoring the behavior of convicts was created in correctional labor institutions. Its creation contributed to maintaining law and order in institutions, strengthening discipline and organization among convicts.

In the post-war period, the legal status of prisoners was regulated by the Instruction from the regime for keeping prisoners in forced labor camps and colonies of the USSR Ministry of Internal Affairs, announced by order of the Ministry of Internal Affairs dated March 24, 1947. [6, p. 179]. The instruction set the task of ensuring the regime and re-education of prisoners on the basis of involving them in useful work.

Other important normative acts of the post-war period were the Regulation "On labor colonies for minors" and the Instruction "On the regime of keeping prisoners in fixed-term prisons." The beginning of the completion of

this stage in the development of the Soviet system of execution of criminal penalties was a joint resolution of the Central Committee of the CPSU, the Council of Ministers of the USSR and the USSR Armed Forces, approving measures for the implementation of state and party leadership in the country.

On April 28, 1953, a resolution of the Council of Ministers of the USSR "On the transfer of the USSR Ministry of Internal Affairs to the USSR Ministry of Justice of labor camps and colonies" was adopted. Under the jurisdiction of the Ministry of Internal Affairs there were special prisons for the detention of especially dangerous state criminals. So, on April 22, 1953, Minister of Justice K. Gorshenin and Deputy Minister of Internal Affairs S. Kruglov signed the act of acceptance and transfer of the GULAG. According to the Decree of the Council of Ministers of the USSR No. 109-65ss "On the transfer by the Ministry of Justice of the USSR of correctional labor colonies and camps to the jurisdiction of the USSR Ministry of Internal Affairs", the penitentiary institutions that existed at that time were again completely subordinate to the USSR Ministry of Internal Affairs.

Conclusions

Study of the organization of the Soviet system of execution of criminal penalties in Ukraine since the formation of the Ukrainian SSR-Ukrainian SSR until 1930 - early 1950s allows you to confirm the general and formulate specific conclusions:

1. In the 1920s the Soviet penitentiary system was seen as an integral part of the punitive system of the state and an effective means of combating the "class enemy". At the same time, the system of correctional labor institutions in Ukraine has not yet been considered as a means of severe punishment in conditions of isolation from society, but rather was interpreted as an integral part of the system of re-education of convicts in conditions of socially useful labor.

2. Reorganization of the system of bodies for the execution of criminal penalties in the late 1920s - early 1930s was aimed at worsening the conditions of detention of convicts, on the one hand, and transforming this system into a means of fulfilling national economic tasks, on the other. This process was characterized by a departure from the principles of re-education of convicts in conditions of socially useful labor and a shift in the priorities of penitentiary policy towards the application of severe punishment for committing a crime in conditions of isolation from society.

The system of bodies for the execution of criminal sentences included corrective labor camps and general places of detention. Prison-type institutions (ordinary and remand prisons), as well as labor colonies for minors and children's educational colonies were considered independent subsystems. Under the conditions of Stalinism, the extensive network of the penitentiary system was a kind of foundation of the totalitarian regime, was in an organic relationship with the administrative-command system.

3. State administration of penitentiary institutions in the post-war years was carried out based on the principles of strict control of various departments of the NKVD, the NKGB, the Ministry of Justice, and the Ministry of Internal Affairs. The legal framework of the institute for the execution of criminal penalties was gradually improved: orders, orders, directives were issued that coordinated the work of penitentiary institutions. Archival documents testify that orders for personnel, orders, instructions, even work plans for the year and quarterly reports were secret.

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CZU 34:004[(470+571)+478)]
DOI https://doi.org/10.52388/2345-1971.2021.e1.13

DIGITAL TECHNOLOGIES: THE STATE AND PROSPECTS OF LEGAL REGULATION IN THE RUSSIAN FEDERATION AND THE REPUBLIC OF MOLDOVA (INTERNATIONAL ROUND TABLE OVERVIEW)

Gheorghe AVORNIC
Doctor habilitat in Law, University Professor, University of European Political and Economic Studies „Constantin Stere", Chisinau, Republic of Moldova
e-mail: *avornic@yahoo.fr*
https://orcid.org/0000-0002-2673-433

Serghei CHUCHA
PhD in Law, University Professor, Institute of State and Law, Russian Academy of Sciences, Moscow, Russian Federation
e-mail: *chuchaigpan@gmail.com*
https://orcid.org/0000-0001-5771-6323

The overview contains the theses of the presentations of the participants of the international round table „Digital Technologies: the state and prospects of legal regulation in the Russian Federation and the Republic of Moldova", held on April 12, 2021 by parners from the Republic of Moldova as the International Union of Lawyers, University of European Political and Economic Studies „Constantin Stere", the Union of Lawyers of the Republic of Moldova and the Interdisciplinary Center for Legal Research in the field of Labor Law and Social Security Law of the Institute of State and Law of the Russian Academy of Sciences. The discussion was attended by employees of the interdisciplinary Center, representatives of different areas of science in Russia and Moldova (lawyers, sociologists, historians, philosophers, psychologists) and different branches of law such as theory and history of state and law, philosophy of law, constitutional law, labor law and social security law, civil law and civil procedure, family law, etc. The participants of the round table focused on the conditions, prerequisites and prospects for the legal regulation of digital technologies in the context of changing the economic model of society. The problems discussed are usually at the intersection of different branches of law, economics, psychology and sociology, and are intersectoral and interdisciplinary in nature. Only an integraled approach to their solution allows us to achieve real practical results in optimizing the regulation of the respective relations.

Keywords: *digital economy, pandemic, Covid-19, distance education, e-justice, artificial intelligence.*

TEHNOLOGII DIGITALE: STAREA ȘI PERSPECTIVELE REGLEMENTĂRII JURIDICE ÎN FEDERAȚIA RUSĂ ȘI REPUBLICA MOLDOVA (PREZENTARE GENERALĂ A MESEI ROTUNDE INTERNAȚIONALE)

Materialul ce urmează conține teze ale prezentărilor participanților la masa rotundă internațională «Tehnologii Digitale: starea și perspectivele de reglementare juridică în Federația Rusă și Republica Moldova», organizată la 12 aprilie 2021 de către un șir de parteneri din Republica Moldova – Uniunea Internațională a Avocaților, Universitatea de Studii Politice și Economice Europene „Constantin Stere", Uniunea Avocaților din Republica Moldova, precum și de Centrul Interdisciplinar de Cercetări Juridice în domeniul Dreptului Muncii și Dreptului Securității Sociale al Institutului de Stat și Drept al Academiei de Științe din Rusia. La discuții au participat colaboratorii Centrului interdisciplinar,

reprezentanți ai diferilor domenii de știință din Rusia și Moldova (juriști, sociologi, istorici, filosofi, psihologi) și diferite ramuri ale dreptului, cum sunt teoria și istoria statului și dreptului, filosofia dreptului, dreptul constituțional, dreptul muncii și dreptul securității sociale, dreptul civil și procesual civil, dreptul familiei, etc. Participanții la masa rotundă s-au axat pe condițiile, premisele și perspectivele de reglementare juridică a tehnologiilor digitale în contextul schimbării modelului economic al societății. Problemele discutate, de regulă, se află la intersecția diferitor ramuri ale dreptului, economiei, psihologiei și sociologiei și sunt de natură intersectorială și interdisciplinară. Doar o abordare compexă în soluționarea lor permite obținerea unor rezultate practice reale în optimizarea reglementării relațiilor respective.

Cuvinte-cheie: *economie digitală, pandemie, COVID-19, învățământ la distanță, e-justiție, inteligență artificială.*

TECHNOLOGIES NUMÉRIQUES: ÉTAT ET PERSPECTIVES DE LA RÉGLEMENTATION JURIDIQUE EN FÉDÉRATION DE RUSSIE ET EN RÉPUBLIQUE DE MOLDOVA (APERÇU DE LA TABLE RONDE INTERNATIONALE)

L'aperçu contient les résumés des interventions des participants de la table ronde internationale „Le Numérique: l'état et les perspectives de la réglementation juridique dans la Fédération de Russie et la République de Moldova”, organisée le 12 avril 2021 par des partenaires de la République de Moldova – l'Union internationale des avocats, l'Université des études politiques et économiques européens „Constantin Stere”, l'Union des avocats de la République de Moldova, mais aussi pur le Centre interdisciplinaire d'études juridiques en matière de droit du travail et droit de la sécurité sociale de l'Institut de l'état et du droit de l'Académie des sciences de Russe. Aux discussions ont participé les employés du Centre interdisciplinaire, des représentants de différentes branches de la science de Russie et de Moldova (avocats, sociologues, historiens, philosophes, psychologues) et des différentes branches du droit comme la théorie et l'histoire de l'état et du droit, la philosophie du droit, le droit constitutionnel, le droit du travail et le droit de la sécurité sociale, le droit civil et le processus civil, le droit de la famille, etc. Les participants à la table ronde se sont penchés sur les conditions, les prémisses et les perspectives de la régulation juridique des technologies numériques dans le contexte de l'évolution du modèle économique de la société. Les questions examinées se situent généralement à la jonction des différentes branches du droit, de l économie, de la psychologie et de la sociologie, et sont intersectorielles et interdisciplinaires. Seule une approche intégrée de leur solution permet d'obtenir des résultats concrets dans l'optimisation de la réglementation des relations respectives.

Mots-clés**:** *économie numérique, pandémie, Covid-19, éducation à distance, e-justice, intelligence artificielle.*

ЦИФРОВЫЕ ТЕХНОЛОГИИ: СОСТОЯНИЕ И ПЕРСПЕКТИВЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ В РОССИЙСКОЙ ФЕДЕРАЦИИ И РЕСПУБЛИКЕ МОЛДОВА (ОБЗОР МЕЖДУНАРОДНОГО КРУГЛОГО СТОЛА)

Обзор содержит тезисы выступлений участников международного круглого стола «Цифровые технологии: состояние и перспективы правового регулирования в Российской Федерации и Республике Молдова», проведенного 12 апреля 2021 года партнерами из Республики Молдова – Международным союзом юристов, Университетом политических и экономических европейских знаний имени Константина Стере, Союзом юристов Республики Молдова, а также междисциплинарным Центром правовых исследований в области трудового права и права социального обеспечения Института государства и права Российской академии наук. В обсуждении приняли участие сотрудники междисциплинарного Центра, представители разных направлений науки России и Молдовы (юристы, социологи, историки, философы, психологи) и различных отраслей права, таких как теория и история государства и права, философия права, конституционное право, трудовое право и право социального обеспечения, гражданское право и процесс, семейное право и др. В фокусе внимания участников круглого стола находились условия, предпосылки и перспективы правового регулирования цифровых технологий в условиях смены экономической модели общества. Обсуж-

давшиеся проблемы, как правило, лежат на стыке разных отраслей права, экономики, психологии и социологии, носят межотраслевой и междисциплинарный характер. Только комплексный подход к их решению позволяет достичь реальных практических результатов в оптимизации регулирования соответствующих отношений.

Ключевые слова: *цифровая экономика, пандемия, COVID-19, дистанционное образование, электронное правосудие, искусственный интеллект.*

On April 12, 2021, the International Union of Lawyers, the Constantine Stere University of Political and Economic European Studies (Republic of Moldova), the Union of Lawyers of the Republic of Moldova and the Interdisciplinary Center for Legal Research in Labor Law and Social Security Law of the Institute of State and Law of the Russian Academy of Sciences held an international round table "Digital technologies: the state and prospects of legal regulation in the Russian Federation and the Republic of Moldova", the participants of which were in several cities of the Russian Federation and the Republic of Moldova.

Members of the organizing committee of the round table addressed the participants of the event with a welcoming speech Director of the Institute of State and Law of the Russian Academy of Sciences, Corresponding Member of the Russian Academy of Sciences, Honored Lawyer of the Russian Federation, Doctor of Law, Professor **Alexander Nikolayevich Savenkov**, Rector of the Constantin Stere University of Political and Economic European Studies, Deputy Chairman of the International Union of Lawyers, Chairman of the Union of Lawyers of the Republic of Moldova, Doctor of Law, Professor Georgiy Konstantinovich Avornic and Chairman of the International Union of Lawyers, Honored Lawyer of the Russian Federation Andrei Adamovich Trebkov, who noted that the progressive development of digital technologies is a trend at the beginning of the third millennium of human history. Last year, amid the global spread of the Covid-19 Coronavirus, there was an explosive growth in the use of information technology in almost all areas of human existence - from all levels of education to the litigation of disputes. Millions of people around the world were simultaneously forced to replace live human contacts with online communication and work. The round table is dedicated to discussing the practice of using digital technologies in Russia and Moldova, the problems that arise in this case and the prospects for legal regulation in our countries and the global world. The problems of digitalization, which is becoming more widespread within the framework of the modern economic structure and especially during the pandemic, deserve the closest attention of the state and the scientific community. In their welcoming speech, the speakers emphasized the relevance of the round table held on the day of the 60th anniversary of the first manned flight into space and accompanied by the restriction of the use of ZOOM services in Russia, which emphasizes the fragility of the modern telecommunications and digitalization system.

The round table was moderated by the Head of the Interdisciplinary Center for Legal Research in the Field of Labor Law and Social Security Law, Chief Researcher of the Sector of Civil Law, Civil and Arbitration Procedure of the Institute of State and Law of the Russian Academy of Sciences, Doctor of Law, **Professor Sergey Yuryevich Chucha** and Deputy Head of the Center for Technical and Technical Studies of the Institute of

State Policy of the Russian Academy of Sciences, RAS, Deputy Director of the Institute of State and Law of the Russian Academy of Sciences for Research, Doctor of Law **Natalya V. Letova.** The discussion was attended by scientists and teachers of universities in Russia and Moldova, employees of the interdisciplinary center, representatives of various areas of science - lawyers, sociologists, historians, philosophers, psychologists, and jurisprudence - the theory and history of state and law, philosophy of law, constitutional law, labor law and social security law, civil law and procedure, family law, criminal law and procedure, etc.

The discussion was opened by the report "**Legal regulation and practice of digital technologies in the Republic of Moldova**" by the rector of the University of Political and Economic European Studies named after Constantin Stere, chairman of the Union of Lawyers of the Republic of Moldova **G. K. Avornic**. He noted that the development of digital technologies is connected not only and not so much with the Covid-19 pandemic. There is a systematic process of transition to the sixth economic order, the necessary condition for which is the digitalization of all aspects of the life of society. The pandemic only dramatically accelerated this process, and it is not known how such an acceleration will eventually affect the objectively determined progressive development of the social organism on the path of digitalization. Today, the best students are those who have the most life experience. Therefore, the Faculty of Law of the Stere University combines the specialties "applied computer science" and "jurisprudence" - this combination is most in demand by modern business and law enforcement agencies.

G. K. Avornic outlined the digitalization tasks that are currently facing in the field of education in Moldova, which, in one combination or another, are also relevant for other regions and countries. Thus, special attention should be paid to the development of material information and communication infrastructure. The introduction of digital programs, the development of online education, and the improvement of the skills of teachers in the field of digital technologies are also important. All this can be tested by creating a model educational institution with the subsequent distribution of developments to all specialized universities.

In the development of a modern network economy and digital infrastructure, Russia is the undisputed leader and benchmark for many countries of the world. Nevertheless, the practice of the functioning of the national economy of the Republic of Moldova, perhaps, showed a less effective spread of digital technologies compared to the Russian Federation, however, their rather effective use, taking into account the size of the territory of the republic, allowing to achieve all the goals of management and scientific activity, education, services, etc., declared during the Coronavirus pandemic.

The discussion was continued by **Nina Ivanovna Solovyanenko**, Senior Researcher, Department of Business and Corporate Law of the Institute of State and Law of the Russian Academy of Sciences, Candidate of Law. In her report on the topic "***Cloud technologies in science***", she revealed the concept of the term "open science", which is currently used to refer to universal access to scientific research and data, the expansion of scientific cooperation, the possibility of creating and disseminating scientific knowledge for social actors that are not part of institutional scientific community. N.I. Solovyanenko spoke

about the presence of a digital agenda in the European Union and in Russia, consisting in legislative support for innovation, creating better conditions for innovation, including digitalization. Emphasizing the importance of cloud technologies in general, she paid special attention to the EU initiative aimed at encouraging the creation of a "scientific cloud".

Vice-Rector for Development and International Relations of the Southern University (IUBiP, Rostov-on-Don), Candidate of Psychological Sciences **Vera Mikhailovna Golubov** in the message **"Psychological aspects of digitization**" supported the conclusions of the keynote speaker and previous speakers on the dramatic acceleration of the introduction of digital technologies in education and science worldwide, including in the Russian Federation. In her presentation, V. M. Golubova addressed the main threats and risks of digitization in education for educational users and teachers. In doing so, she elaborated on the psychological problems experienced by students and teachers, both in the transition to distance learning and in the return to conventional methods of teaching with attendance, as well as refusal to communicate directly during distance learning. She noted the need to continue in-depth research on these issues in order to avoid further use of remote digital technologies in the teaching process in universities and schools, as well as in scientific and conference activities throughout the post-Soviet area and globally.

Researcher at the Interdisciplinary Center for Legal Research in the Field of Labor Law and Social Security Law of the State Institute of Civil Procedure of the Russian Academy of Sciences, Leading Researcher of the Sector of Civil Law, Civil and Arbitration Procedure of the Institute of State and Law of the Russian Academy of Sciences doctor of Law **Ekaterina Vladimirovna Mikhailova**, in the report "***The use of digital technologies in legal proceedings and the organization of judicial activities in the Russian Federation***", dwelled on various aspects of e-justice in Russia and the impact on its improvement of social distancing in the context of the Coronavirus pandemic. Electronic justice in the most general sense - the activities of courts to resolve disputes and consider other cases within their competence, using information and communication technologies and systems, including those providing electronic document management, the formation of electronic files and electronic archives, as well as open access to network "Internet" to information on the course and results of consideration of court cases. Already in the pre-covid period, the system was established and operated effectively in all courts of the Russian Federation. It includes placement in the AIS «Legal Procedure» and in the File of Arbitration Court Acts in all cases; audio recording of all court sessions; placing information on the movement of a case in free access to the AIS «Legal Procedure» and in the File of Arbitration Cases; Automatic notification of a case by e-mail or text message via «Electronic Sentinel» system by all registered persons in the system; videoconference system equalizing economic entities located in different regions; and, in fact, one of the unifying factors of the Russian Federation; the electronic filing system of the Russian Federation's arbitration courts. The effective functioning over the years of the last two elements of electronic justice in the arbitration court system has made it possible, in response to the spread of Coronavirus infection, step up efforts to further increase remote participation in court proceedings using personal

video-streaming devices with pre-registration on the court's website.

Acting Scientific Secretary of the Institute of State and Law of the RAS, Candidate of Juridical Sciences **Igor Iosifovich Butrim** in the Report ***"Legal Regulation of the Use of Digital Technologies in Law Enforcement*"** detailed information on various aspects of the use of information technology in the maintenance of public order: prevention, suppression and detection of offences, with the perpetrators being brought to justice. While acknowledging the positive impact of the provision of modern electronic technologies to law enforcement agencies in combating offences, the Rapporteur noted the increasing use of such technologies by offenders, this forces law enforcement officials to continuously upgrade their skills, including in the use of modern technologies to combat crime and other violations of the law.

Deputy Director of the Institute of State and Law of the Russian Academy of Sciences for Research **N. V. Letova**, who drew attention in her report "***Legal regulation and practice of using digital technologies in science in the Russian Federation***" to the program currently being developed within UNESCO for the transition of states to open science " Open Science", noted that the ongoing fundamental changes in the global economy assign an important role to science and technology as fundamental elements in solving national and global problems. In this connection, the work of scientists at the present stage is of great importance for the development of the country. The author emphasized that the creative nature of scientific work and, accordingly, the labor function of scientific workers necessitates increased requirements for their qualifications, as well as the establishment of special rules for their admission, dismissal and other features of the regulation of working conditions.

The Head of the Scientific and Organizational Department of the Institute of the State and the Law of the Russian Academy of Sciences dedicated their speeches to the impact of digitization on social and labour relations "***Application of digital technologies in the legal regulation of labour relations in the Russian Federation (electronic work books)"*** and Secretary of the Interdisciplinary Centre for Legal Research on Labour Law and Social Security Law, IGP RAS, Candidate of Legal Science **Anna Vasilyevna Dzubak**, and "***Application of Digital Technologies in the Legal Regulation of Social and Labour Relations in the Russian Federation***" Associate Researcher in the Civil Law Sector, Civil and Arbitration Process of the Institute of State and Law of the RAS, **Tatyana Vladimirovna Sokolov**, Research Officer at the Centre for Legal Research in the Field of Labour Law and Social Security Law of the IPP RAS, who, on the basis of an analysis of the current state-of-the-art legislation and its application, The theoretical works distinguished the concepts of teleworking from teleworking, noted the peculiarities of the conclusion and termination of employment contract for teleworking, examined the peculiarities of labour protection of remote workers. The coronavirus pandemic (COVID-19) has had a profound impact on all aspects of human life, including work. In order to contain the spread of the virus, measures such as physical separation, closure of most enterprises and organizations, etc., have been taken in various countries. In order to contain the spread of the virus, measures have been taken in Russia to ensure the health and epidemiological well-being of the population, including telecommuting, which was mandatory and extended to most

organizations. Telecommuting seemed to be the most acceptable way of dealing with the pandemic, making it more responsive to the interests of the parties to the labour relationship, as opposed to home-based and remote work, also recommended by the Ministry of Labour. However, the regulations governing the regulation of the work of remote workers, which are set out in chapter 49.1 of the Labour Code, have not been sufficiently flexible and have restricted the use of information and communication technologies in labour relations, The absence of a properly documented transfer to a distance job, detailed regulation of the work of remote workers, the establishment of working and rest times for them, the manner in which the worker interacts with the employer and other factors have led to a number of disputes. Labour legislation has not proved ready for mass removals. It has therefore become necessary to amend the labour legislation with regard to the regulation of the work of workers performing work functions remotely. For example, the Federal Act of December 8, 2020, 407-F3 «On Introducing Amendments to the Labour Code of the Russian Federation in the Regulation of Remote (Remote) Work and Temporary Transfer of an Employee to Remote (Remote) Work on the Initiative of the Employer in Exceptional Cases» Amendments were made to chapter 49.1 of the TC of the Russian Federation. Changes were made to the concept of telecommuting, the characteristics of the reception and dismissal of telecommuters, and the possibilities of using information and communication technologies and networks for the performance of work duties. It has become possible to employ workers in temporary distance work for a period not exceeding six months or periodically, provided that the periods of work are alternating between the periods of work performed remotely and the periods of work performed in a fixed workplace, and also temporarily transfer workers to telecommuting in the exceptional cases established by article 312.9 of the Labour Code.

To conclude the discussion with the report "***Application of elements of artificial intelligence in the legal regulation of public relations in the Russian Federation: experiment and perspective***" **S. Y. Chucha**, Head of the interdisciplinary Centre for Legal Studies in Labour and Social Security Law, IPP RAS. He noted that Russia was in the second year of an experiment to create the necessary conditions for the development and introduction of artificial intelligence technologies. Drafters of the Federal Act of 24 April 2020, 123-FZ, on the experiment to establish special regulations in order to create the necessary conditions for the development and introduction of artificial intelligence technologies in the constituent entities of the Russian Federation: The city of federal significance of Moscow and the amendment of articles 6 and 10 of the Federal Law "On Personal Data» (art. 2) consider artificial intelligence as a set of technological solutions allowing to simulate human cognitive functions (including self-learning and finding solutions without a predetermined algorithm) and to obtain, at a minimum, comparable results for specific tasks, with the results of human intellectual activity. The set of technological solutions includes information and communication infrastructure (including information systems, information and telecommunication networks, other information processing equipment), software (including where machine learning methods are used), processes and services for processing data and finding solutions". Unlike GOST R 43.0.5-2009, which defines ar-

tificial intelligence as "simulated (artificially reproducible) intellectual activity of human thinking", the mentioned Federal Law is talking about imitation, and not modeling (reproduction) of human intellectual (cognitive) activity, and this more precise wording. It is possible to imitate the cognitive functions of a person, imitate them when creating an appropriate artificial system, but it is impossible to reproduce (simulate - GOST uses these terms as synonyms) with the current level of technological development. Another difference between the two legal definitions is that artificial intelligence should imitate (reproduce-simulate). In GOST, this is "intellectual activity of human thinking", and in the Federal Law, "human cognitive functions (including self-learning and the search for solutions without a predetermined algorithm)". Both terms are multi-industry and multi-valued, it is difficult to determine exactly what meaning the authors of regulations put into them. Perhaps the use of the word "cognitive" in the law is connected with the desire to simply avoid repetition and definition of the concept of intelligence through intelligence, i.e., as a more suitable synonym in accordance with the rules of the Russian language. Perhaps the concept of «cognitive functions» is applied as a broader one, including intellectual activity. Considering that the analyzed Federal Law is of a framework nature and is aimed at conducting a complex and long (five years) socio-legal and technical experiment, the result of which is unknown, the developers used an ambiguous term in order not to limit the actual scope of this experiment. If you simulate cognitive functions, you can mimic anything. And what cognitive functions of a person will be able to «imitate» in the development of artificial intelligence - will show the final empirical data which before the results of the experiment the legislator is not able to predict reliably. On the whole, the concept of artificial intelligence, as well as the conceptual apparatus of the Federal Act under study, has been developed at a very high level and, above all, makes it possible to draw up a set of normative acts of the constituent entities of the Federation and to carry out experiments creatively.

The trend of legal regulation in the context of a pandemic is the expansion of the use of remote work in particular and electronic services for obtaining public services in general. Its most striking manifestation was the adoption of the Federal Law of June 8, 2020 No. 168-FZ «On the unified federal information register containing information about the population of the Russian Federation.» With all this, we must not forget that digitalization is one of the trends in social development along with robotization. In digitalization in terms of infrastructure, Russia is at the forefront in the world. At the same time, the domestic component microelectronic base does not allow us to be at the forefront, and the state of industrial robotization (the ratio of the use of robots and human labor) does not allow us to include Russia even in the third ten countries. Perhaps this will allow us to push back the obvious result of the deep robotization of the economy - the destruction of the labor market we are used to and the transformation of the majority of able-bodied people into unemployed people receiving a basic income.

Summing up the discussion, **N.V. Letova,** Deputy Director of the Institute of State and Law of the Russian Academy of Sciences for Research, noted that the state in Russia and Moldova shows special care and attention to the development and dissemination of digital technologies as an important condition for

the transition to the sixth economic order. In practice, there are many problems that need to be addressed. These problems, as a rule, lie at the intersection of civil, procedural, labor, family law and other branches of law, economics, education, science, psychology and sociology, and are intersectoral and interdisciplinary in nature. Only an integrated approach to their solution will make it possible to achieve real practical results in optimizing the regulation of the relevant relations.

INTERNATIONAL SCIENTIFIC JOURNAL
”SUPREMACY OF LAW”

REVISTĂ ȘTIINȚIFICĂ INTERNAȚIONALĂ
”SUPREMAȚIA DREPTULUI”

МІЖНАРОДНИЙ НАУКОВИЙ ЖУРНАЛ
«ВЕРХОВЕНСТВО ПРАВА»

JOURNAL SCIENTIFIQUE INTERNATIONAL
”SUPRÉMATIE DE DROIT”

МЕЖДУНАРОДНЫЙ НАУЧНЫЙ ЖУРНАЛ
«ВЕРХОВЕНСТВО ПРАВА»

Nr. 1, anul 6 (2021)

Bun de tipar 29.07.2021. Formatul 60x80 $^{1}/_{8}$.
Coli de tipar 19,5. Coli editoriale 15,9.
Tirajul 200 ex.

Centrul Editorial-Poligrafic al USM
str. Al. Mateevici, 60, Chişinău, MD 2009